NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
LITTERA SCRIPTA MANET
1985

FEDERAL REGISTER

Vol. 88 Tuesday,

No. 218 November 14, 2023

Pages 77881–78216

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.govinfo.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 88 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–09512—1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: *https://www.gpo.gov/frsubs.*

Printed on recycled paper.

Contents

Federal Register
Vol. 88, No. 218
Tuesday, November 14, 2023

Separate Parts In This Issue

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
Vol. 88, No. 218
Tuesday, November 14, 2023

Presidential Documents

Title 3—

The President

Proclamation 10670 of November 8, 2023

World Freedom Day, 2023

By the President of the United States of America

A Proclamation

On World Freedom Day, we remember that the hammer blow that brought down the Berlin Wall and the might that lifted the Iron Curtain were not sparked by the words of any single leader—it was the people of Europe who spent decades fighting to free themselves and defend democracy. Together, we recommit ourselves to this cause—knowing that the darkness that drives autocracy is no match for the flame of liberty that lights the souls of free people everywhere.

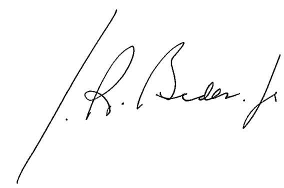
Around the globe, we are seeing a revival of the forces of autocracy, which are once again demonstrating contempt for the rule of law, democratic freedom, and the truth itself. Russia's ongoing aggression against Ukraine is another battle in the long struggle between liberty and authoritarianism, one that compels us to remember that the fight for democracy is perennial and that we must stand up for our values each and every day.

That is exactly what the United States is doing. Together with our partners and allies, the United States will continue to defend the fundamental freedoms and human rights entitled to every person around the world. We will continue working toward a future where women and girls can enjoy equal rights and equal participation in their societies; where Indigenous groups, people with disabilities, and racial, ethnic, and religious minorities do not have their potential stifled by systemic discrimination; and where LGBTQI+ people are not persecuted or targeted with violence because of who they are. We will continue to stand with people around the world striving for a brighter future in the face of autocratic attempts to forge a darker path. As we support democracy abroad, we are mindful that our own democracy is still at risk. My Administration is working tirelessly to show that democracies can deliver on the challenges that matter most in peoples' lives, and I call on the American people to remain vigilant in the defense of our democratic values and institutions.

As we honor the hope felt around the world 34 years ago today when Berliners finally crossed from East to West and ushered in a new future, we remember that when we choose to stand together and recognize the common hopes that bind all humanity, we hold in our hands the power to bend the arc of history. Together, may we continue to live up to the promises we have made to ourselves, to the vulnerable, and to all those who will inherit the world we create. May we work side-by-side to bend the arc of history for the good of the world.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, do hereby proclaim November 9, 2023, as World Freedom Day. I call upon the people of the United States of America to remember the hope symbolized by the fall of the Berlin Wall and reaffirm our dedication to freedom and democracy.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of November, in the year of our Lord two thousand twenty-three, and of the Independence of the United States of America the two hundred and forty-eighth.



[FR Doc. 2023–25223
Filed 11–13–23; 8:45 am]
Billing code 3395–F4–P

Rules and Regulations

Federal Register

Vol. 88, No. 218

Tuesday, November 14, 2023

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2424

Negotiability Proceedings; Correction

AGENCY: Federal Labor Relations Authority.

ACTION: Correcting amendment.

SUMMARY: The Federal Labor Relations Authority is correcting its regulations regarding negotiability proceedings.

DATES: Effective November 14, 2023.

FOR FURTHER INFORMATION CONTACT: Thomas Tso at *ttso@flra.gov* or at (771) 444–5779.

SUPPLEMENTARY INFORMATION: In FR Doc. 2023–19269, appearing in the **Federal Register** of Tuesday, September 12, 2023, on pages 62456–57, instruction 7 revised § 2424.22, but the regulatory text inadvertently failed to retain § 2424.22(d), which was not a part of the revision, in the revised text. Section 2424.22(d) simply cross-references a general definition of ''Service'' in § 2424.2(g), which, in turn, cross-references the general obligations for service in part 2429. Accordingly, this correcting amendment is not a substantive change. The correcting amendment retains the regulatory text that was not part of the intended revisions in FR Doc. 2023–19269 and inadvertently omitted. This document corrects the final regulations.

List of Subjects in 5 CFR Part 2424

Administrative practice and procedure, Government employees, Labor management relations.

For the reasons set out in the preamble, the Federal Labor Relations Authority corrects 5 CFR part 2424 by making the following correcting amendment:

PART 2424—NEGOTIABILITY PROCEEDINGS

■ 1. The authority citation for part 2424 continues to read as follows:

Authority: 5 U.S.C. 7134.

■ 2. Amend § 2424.22 by adding paragraph (d) to read as follows:

§ 2424.22 Exclusive representative's petition for review; purpose; divisions; content; service.

* * * * *

(d) *Service.* The petition for review, including all attachments, must be served in accord with § 2424.2(g).

Dated: November 6, 2023.

Thomas Tso,

Solicitor and Federal Register Liaison.

[FR Doc. 2023–24820 Filed 11–13–23; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS–2018–0007]

RIN 0579–AE73

Importation of Fresh Beef From Paraguay

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of certain animals, meat, and other animal products by allowing, under certain conditions, the importation of fresh (chilled or frozen) beef from Paraguay. Based on the evidence from a risk analysis, we have determined that fresh beef can safely be imported from Paraguay, provided certain conditions are met. This final rule will provide for the importation of fresh beef from Paraguay into the United States, while continuing to protect the United States against the introduction of foot-and-mouth disease.

DATES: Effective December 14, 2023.

FOR FURTHER INFORMATION CONTACT: Dr. Ingrid Kotowski, Import Risk Analyst, Regionalization Evaluation Services, VS, APHIS, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606; (919) 855–7732; *AskRegionalization@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of certain animals and animal products into the United States to prevent the introduction of various animal diseases, including foot-and-mouth disease (FMD), African swine fever, classical swine fever, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Under most circumstances, § 94.1 of the regulations prohibits the importation of live ruminants and swine and fresh (chilled or frozen) meat derived from ruminants and swine originating in, or transiting through, a region where FMD exists. Section 94.11 restricts the importation of ruminants and swine and their meat and certain other products from regions that are declared free of FMD but that nonetheless present a disease risk because of the regions' proximity to or trading relationships with regions affected with FMD. Regions that the Animal and Plant Health Inspection Service (APHIS) has declared free of FMD and regions declared free of FMD that are subject to the restrictions in § 94.11 are listed on the APHIS website at *https://www.aphis.usda.gov/animalhealth/disease-status-of-regions.*

The regulations do allow for certain exceptions to the prohibitions contained in § 94.1. These exceptions include allowing the importation of fresh (chilled or frozen) beef and ovine meat from Uruguay and fresh beef from certain regions of Argentina and a region of Brazil, subject to certain conditions. While there have been FMD outbreaks in the past in those regions, the disease is not currently known to exist in any of them. We do not recognize those exporting regions as FMD-free, however, because the Argentine, Brazilian, and Uruguayan governments all require that cattle be vaccinated for FMD. The conditions for the importation of beef and ovine meat from Uruguay and beef from the exporting regions of Argentina and Brazil are set out in § 94.29 of the regulations and include the following:

• The meat is derived from animals born, raised, and slaughtered in the exporting region.

• FMD has not been diagnosed in the exporting region within the previous 12 months.

• The meat comes from bovines or sheep that originated from premises where FMD has not been present during the lifetime of any bovines and sheep slaughtered for the export of meat to the United States.

• The meat comes from bovines or sheep that were moved directly from the premises of origin to the slaughtering establishment without any contact with other animals.

• The meat comes from bovines or sheep that received ante-mortem and post-mortem veterinary inspections, paying particular attention to the head and feet, at the slaughtering establishment, with no evidence found of vesicular disease.

• The meat consists only of bovine parts or ovine parts that are, by standard practice, part of the animal's carcass that is placed in a chiller for maturation after slaughter and before removal of any bone, blood clots, or lymphoid tissue. The bovine and ovine parts that may not be imported include all parts of the head, feet, hump, hooves, and internal organs.

• All bone and visually identifiable blood clots and lymphoid tissue have been removed from the meat to be exported (bone-in ovine meat from Uruguay may be imported under certain conditions listed in the regulations, however).

• The meat has not been in contact with meat from regions other than those listed in accordance with § 94.1(a).

• The meat came from carcasses that were allowed to maturate at 40 to 50 °F (4 to 10 °C) for a minimum of 24 hours after slaughter and that reached a pH below 6.0 in the loin muscle at the end of the maturation period. Measurements for pH must be taken at the middle of both longissimus dorsi muscles. Any carcass in which the pH does not reach less than 6.0 may be allowed to maturate an additional 24 hours and be retested, and, if the carcass still has not reached a pH of less than 6.0 after 48 hours, the meat from the carcass may not be exported to the United States.

• An authorized veterinary official of the government of the exporting region certifies on the foreign meat inspection certificate that the above conditions have been met.

• The establishment in which the bovines and sheep are slaughtered allows periodic on-site evaluation and subsequent inspection of its facilities, records, and operations by an APHIS representative.

Historically, trade in fresh (chilled or frozen) beef from Paraguay has not been allowed because APHIS has considered Paraguay to be a country that vaccinates for FMD. However, in response to a request from the Government of Paraguay that we allow fresh (chilled or frozen) beef to be imported into the United States from that country, we conducted a risk analysis. APHIS gathered data to support this analysis from records of the Servicio Nacional de Calidad y Salud Animal (SENACSA), from publicly available information, and from published scientific literature. In addition, APHIS conducted site visits to Paraguay in December 2008 and July 2014 to verify the information submitted by SENACSA and to collect additional data. APHIS drafted the risk analysis in 2018 and periodically reviewed the risk profile of Paraguay to determine whether the conclusions were still valid, with the last such review occurring in 2022.

Our risk analysis concluded that the overall risk associated with importing fresh beef from Paraguay is low and that Paraguay has the infrastructure and emergency response capabilities needed to effectively report, contain, and eradicate FMD in the event of an outbreak and to do so in a timely manner. We further concluded that Paraguay is able to comply with U.S. import restrictions on the specific products from affected areas.

Based on the evidence documented in our risk analysis, we concluded that fresh (chilled or frozen) beef could be safely imported from Paraguay, provided certain conditions are met.

Accordingly, on March 27, 2023, we published in the **Federal Register** (88 FR 18077–18086, Docket No. APHIS–2018–0007) a proposal [1] to amend the regulations to allow the importation of fresh beef from Paraguay under certain conditions.

We solicited comments concerning our proposal for 60 days, ending May 26, 2023. We received 152 comments by that date. They were from producers, importers, exporters, industry and professional associations, and representatives of local and foreign governments. Thirty-two commenters were generally supportive of the proposed rule. The remaining commenters raised questions or concerns about the proposed rule and the risk analysis. The comments are discussed below.

General Comments

One commenter stated that the rule is antithetical to the United States Department of Agriculture's (USDA's) statutory directive to ''strengthen [America's] family farm system'' (7 U.S.C. 2204).

The statute in question directs the Secretary of Agriculture to ''advise the President, other members of his Cabinet, and the Congress on policies and programs designed to improve the quality of life for people living in the rural and nonmetropolitan regions'' of the United States, and authorizes the Secretary to initiate or expand research and development efforts related to solution of problems the Secretary may determine has an effect upon the economic development or the quality of life in rural areas, among other stated duties. It does not represent an overriding ministerial obligation. This rulemaking was issued pursuant to a different statute, the Animal Health Protection Act (AHPA, 7 U.S.C. 8301–8317), which is not mutually contradictory with the statute cited by the commenter.

One commenter stated that the rule is being driven by World Trade Organization (WTO) commitments, rather than AHPA obligations. The commenter cited a statement from the environmental assessment (EA) that was issued in support of the proposed rule as evidence of this, and stated that this is the sole statement made in the proposed rule or its supporting documents regarding the impetus for the rule. Similarly, a commenter stated that the proposed rule is driven by the APHIS 2022 Strategic Plan (goal # 4) as an effort to facilitate international trade and open up markets.

The United States is a member of the WTO and a co-signatory to the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), which governs, among other things, international trade in animal products.[2] Additionally, the commenter is correct that goal # 4 of APHIS' Strategic Plan is trade-related: To maintain and expand the safe trade of agricultural products nationally and internationally.[3]

APHIS is committed to upholding the principles of the SPS Agreement. The statement from the EA cited by the commenter acknowledges this, and states that the analyses conducted in support of the rule adhered to these

[1] To view the proposed rule, supporting documentation, and comments that we received, go to *https://www.regulations.gov/docket/APHIS-2018-0007.*

[2] To view the SPS Agreement, go to *https://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm.*

[3] To view the APHIS Strategic Plan, go to *https://www.aphis.usda.gov/aphis/banner/aboutaphis/sa_overview/ct_about_aphis.*

principles. Additionally, a stated purpose of the APHIS Strategic Plan is to ''outline the goals, objectives, and performance measures that set the direction'' for APHIS in the coming years.

However, neither the SPS Agreement nor the APHIS Strategic Plan prompted the proposed rule. Rather, the proposed rule was driven by Paraguay's request to export fresh beef to the United States and subsequently APHIS' evaluation of that request. Based on a risk analysis, APHIS determined that fresh beef can be imported from Paraguay under certain conditions. These include verifying FMD has not been diagnosed in Paraguay in the past 12 months, the meat comes from premises where FMD has not been present during the lifetime of any of the animals, and the animals were inspected before and after death, among others. Authorizing the importation of animal products subject to mitigations to address the disease risk to livestock that the products may otherwise present is entirely consistent with the AHPA, the authority under which the proposed rule was issued. Finally, contrary to the first commenter's assertion, this was stated repeatedly in the proposed rule and its supporting documents.

One commenter stated that APHIS' risk factors used for evaluating countries, which the commenter stated undergird our risk analyses relative to FMD, were developed to meet WTO obligations and World Organization for Animal Health (WOAH) commitments rather than AHPA obligations and do not mitigate risk. Additionally, the commenter stated that, in the past, APHIS miscalculated the FMD risk of importing beef from multiple countries (Argentina, Japan, South Africa, and South Korea) using these factors. The commenter pointed to outbreaks of FMD in the countries in question shortly after our evaluations. The commenter indicated that, based on previous experience, the risk factors should not be used for evaluations of a region's FMD risk.

The commenter appears to be referring to the provisions of paragraph (b) of 9 CFR 92.2. Under those provisions, requests for APHIS recognition of animal health status of a region must include the following eight categories of information, or factors:

- Scope of the evaluation being requested.
- Veterinary control and oversight.
- Disease history and vaccination practices.
- Livestock demographics and traceability.
- Epidemiological separation from potential sources of infection.
- Surveillance.
- Diagnostic laboratory capabilities.
- Emergency preparedness and response.

The factors are used to analyze the risk for import requests and not intended to have mitigative effect or to specify final agency action. We use this framework of eight information categories (or ''factors'') to ensure consistent and thorough information gathering for our analysis of a region's health status.

One of the factors, emergency preparedness and response, includes an assessment of the ability of the foreign region to quickly detect and contain disease incursions and to promptly notify the United States and other trading partners of such incursions. This factor is germane in the event of an outbreak in the region. To that end, APHIS routinely monitors the international animal health situation, and as import risk levels change over time, APHIS adjusts its import requirements as necessary. In other words, the factors facilitate actively monitoring the disease status of our trading partners and taking appropriate action, as warranted, if the disease status changes.

The effectiveness of this approach, supported by robust, science-based import risk assessments, rigorous APHIS import regulations, and APHIS' ability to take immediate trade-restrictive action when needed, is demonstrated by the continued FMD freedom of the United States. The effectiveness of the approach is also underscored, rather than undercut, by the examples that the commenter cites regarding importation of beef from Argentina, Japan, South Africa, and South Korea. Incursions of FMD into those countries were rapidly detected and communicated to trading partners, and APHIS accordingly promptly restricted importation of relevant animal commodities. Moreover, the incursion of FMD into the countries is not indicative of a failure in our evaluations, as the evaluations never reached a conclusion that FMD could not be introduced into the countries in question.

One commenter stated that Paraguayan husbandry and on-farm practices were not assessed. Others stated that Paraguayan producers may be allowed to use vaccines, biologics, parasite controls, or growth hormones that are banned in the United States.

We conducted multiple evaluations through on-farm inspections during APHIS site visits and detailed review of relevant documentation. Additionally, during the risk analysis, APHIS evaluated animal husbandry and on-farm practices in Paraguay. Our risk analysis evaluated Paraguay's request in a manner consistent with our statutory authority, which pertains to pests and diseases of livestock, and determined that fresh beef can be safely imported from Paraguay under certain conditions, which were set forth in the proposed rule as regulatory requirements. With that being said, USDA's Food Safety and Inspection Service (FSIS) and the Food and Drug Administration evaluate beef imports for the possible human health risks mentioned by the commenter.

Two commenters stated that imports should only be authorized from countries with the same food safety regulations and animal husbandry practices as our own, because otherwise Paraguayan producers are given an unfair competitive advantage over U.S. producers that have to abide by U.S. food safety regulations and animal husbandry practices. One of the commenters was also concerned about Paraguayan beef being contaminated as a result of not being listed by the U.S. Anti-Doping Agency as having tighter regulations and higher quality standards for its meats.

FSIS is entrusted with making sure the food safety regulations of other countries are equivalent to those of the United States. With regard to animal husbandry and on-farm practices, under the Animal Health Protection Act, APHIS may prohibit or restrict imports only to the extent necessary to prevent the introduction into or dissemination within the United States of any pest or disease of livestock. We assess the risk of the importation of animals, animal products, and other articles from countries based, in part, on their own practices, and identify appropriate mitigations based on this assessment of risk.

A commenter stated that the rule will hasten deforestation in Paraguay and cited three articles in support of this comment.

While one of the articles cited by the commenter does correlate beef exports from the Chaco region of Paraguay to an increased risk of deforestation, the article does not provide the data that led to this conclusion and also indicates that other beef-producing municipalities in Paraguay do not share this risk. Moreover, the other articles cited by the commenter cite multiple factors leading to deforestation in the Chaco region, including increased planting of soy and other crops, increased demand within Paraguay for beef and leather, producers' unlawful appropriation of land for personal gain, and changing climatic conditions. The articles provide no direct evidence that this rulemaking specifically will hasten deforestation in Paraguay.

Several commenters stated that FMD was a high-risk disease, and that APHIS failed to characterize the current risk of introduction of FMD into the United States or the cumulative effect of authorizing additional imports from a country that vaccinates for FMD.

We agree that FMD is a high-risk disease; however, neither the proposed rule nor its supporting documentation characterized it otherwise.

With regard to characterizing the current risk of introduction of FMD into the United States or the cumulative effect of authorizing additional imports from a country that vaccinates for FMD, the commenter misunderstands how APHIS assesses FMD risk. APHIS looks at each market access request as a distinct request, and tailors mitigations based on the unique circumstances of the exporting country, which may or may not be commensurate with previously evaluated countries. We do not authorize imports unless we believe the disease risk of that import can be adequately mitigated.

One commenter stated that APHIS should only authorize trade if it presents zero risk of transmitting diseases of livestock.

All trade, whether domestic or international, involves a degree of risk, however miniscule. The commenter's request would have the effect of a de facto prohibition on the importation and interstate movement of livestock and animal products.

Finally, several commenters stated that the rule needed to include country-of-origin labeling, or COOL.

In 2015, Congress repealed the legislation authorizing the Executive branch to implement COOL for muscle cuts of beef and pork and ground beef and pork.[4] Moreover, COOL has never been administered by APHIS within the USDA, but by the USDA's Agricultural Marketing Service.

Risk Analysis Comments

As noted previously, the proposed rule was based on a risk analysis that we prepared regarding Paraguay's export request. We received several comments concerning the risk analysis.

One commenter stated that, in 2017, the Government Accountability Office (GAO) conducted an audit of APHIS' risk analysis practices and indicated areas for improvement with APHIS' risk evaluations in terms of timeliness and transparency. The commenter stated that the Paraguay evaluation appeared to have been conducted before APHIS implemented GAO's recommendations.

While Paraguay's evaluation was initiated before the GAO audit, the risk analysis was completed in 2018, after APHIS had addressed the GAO audit recommendations and incorporated them into policies and practices.

Several commenters stated that the risk analysis was based on outdated information on the potential for FMD exposure from Paraguayan beef. Two commenters pointed specifically to the site visits, which took place in 2008 and 2014, as being out of date. Another commenter stated that that there are no official site visit reports from the APHIS in-country visits in 2008 and 2014. The commenter stated that APHIS should not proceed with this rulemaking until new site visits have occurred and an updated risk analysis is conducted based off the official site visit reports, and stakeholders are allowed time to review the results of the updated risk analysis.

We disagree with these assessments of the risk analysis. While the risk analysis included data from site visits to Paraguay in 2008 and 2014, it also included a review of more recent data provided by Paraguay, and APHIS periodically reviewed the risk profile of Paraguay after the risk analysis was drafted to determine whether the conclusions were still valid, with the last such review occurring in 2022. Additionally, for context, FMD has not been detected in Paraguay in more than 10 years. As noted in the risk assessment, the overall structure and resources of SENACSA have significantly increased and been strengthened in reaction to the FMD outbreak in 2012. Moreover, the incidence of FMD in South America has decreased steadily over the past 20 years, suggesting a continued decrease in risk of FMD incursion into Paraguay from neighboring countries. Currently, all countries in South America except Venezuela are recognized by WOAH as FMD free, either with or without vaccination.

APHIS documented the findings of its 2008 and 2014 site visits in formal correspondence to Paraguay following the site visits, including requests for additional information and clarification of issues identified. Consistent with overall Agency policy, these government-to-government documents are maintained internally and not publicly posted. However, the totality of our evaluation and findings were documented in the risk analysis.

One commenter stated that 2021 data[5] regarding FMD vaccination maintained by Paraguay was voluntarily submitted and incomplete. The commenter also provided a table of testing data for FMD that, the commenter contested, still showed the presence of FMD in Paraguay.

The data evaluated by the commenter was indeed incomplete and voluntarily submitted, but the site does not claim that this vaccination data is the data maintained by SENACSA to support claims of FMD freedom. To that end, it is worth noting, as we did previously, that FMD has not been detected in Paraguay in more than 10 years. In this regard, we note that the commenter misread the tables regarding testing for FMD. As we stated in the risk analysis that accompanied the proposed rule, samples in Paraguay are screened for FMD using an Enzyme Linked Immunosorbent Assay 3ABC Nonstructural Protein Antibody (ELISA) test; if they are reactive, they are sent for confirmatory testing using an Electroimmunotransfer Blot Assay (EITB) test. While several samples were reactive to the ELISA screening test, none were reactive to the confirmatory EITB test.

Moreover, it is also worth noting that, based on the dossier Paraguay submitted to WOAH, WOAH still considers Paraguay free of FMD with vaccination. Additionally, the commenter appears to equate FMD freedom with vaccinating cattle for FMD, and to assume that our evaluation presumed vaccination as one of Paraguay's mitigation measures for FMD. This misunderstands our evaluation. Vaccination for FMD was not part of our mitigation structure, but rather why we considered mitigations for FMD risk to be warranted. A possible downtick in vaccination in Paraguay does not alter our mitigation strategy for beef from Paraguay.

One commenter stated that according to the risk analysis, most funding for Paraguay's FMD program comes from user fees, including fees from the movement of cattle, which means the success of the program is based on private sector support. The commenter expressed concern that APHIS has not taken into consideration the impact of economic downturns from the global pandemic that may limit Paraguay's overall capabilities. The commenter suggested that APHIS should re-evaluate the economic strength of the cattle and beef sector in Paraguay and review the

[4] To view the statute containing the Congressional repeal of COOL, go to *https://www.congress.gov/bill/114th-congress/house-bill/2029/text.*

[5] The commenter cited the following website containing the data: *https://www.senacsa.gov.py/index.php/Temas-pecuarios/sanidad-animal/programas-sanitarios/fiebre-aftosa.* Please note that the page cited is in Spanish.

FMD budget for the past 5 years to have a more accurate assessment of Paraguay's capabilities to fund efforts to combat and control an FMD outbreak.

In the proposed rule, APHIS proposed to apply numerous conditions to the importation of fresh beef from Paraguay that currently apply to fresh beef or ovine meat from specified regions that APHIS does not recognize as FMD free. These conditions are designed to mitigate the risk of introduction of FMD virus into the United States and protect America's livestock health, and have been demonstrated in the past to successfully address FMD risk. We have confidence that these mitigations will be effective in addressing the possible FMD risk associated with the importation of beef from Paraguay.

However, we do acknowledge the challenges FMD programs face worldwide, including the possible economic downturns cited by the commenter; while economic downturns may not always have animal health implications, in some instances they may. To that end, shipments of animal products are inspected for regulatory compliance at ports of entry and are subject to remedial measures, including destruction, if they are found to be noncompliant. Moreover, APHIS routinely monitors the animal health statuses of foreign regions for evidence that our previous conclusions may no longer be germane, and adjusts import requirements as warranted if the import risk level changes. This process strengthens assurances that our import procedures continue to appropriately mitigate the risk of foreign animal disease introduction over time by maintaining a high level of vigilance and, if necessary, adjusting safeguards when new information or situations arise.

Some commenters expressed concerns with trusting our sanitary restrictions. One commenter stated that despite a 2-year ban issued by FSIS against JBS, a meat processing company in Brazil, after JBS shipped rotten, salmonella-ridden beef to the United States, JBS continued to export beef. The commenter stated that USDA's actions with JBS indicate that our sanitary restrictions are not absolute. Another commenter noted that Brazil has announced it will no longer vaccinate its cattle herd for FMD. The commenter further stated that ''USDA's lack of response to Brazil's repeated offenses sends the message to neighboring countries that actions like that are permissible, even for countries with a history of FMD.'' The commenter expressed concern that Paraguay might follow suit and stop vaccinating its cattle for FMD.

The actions of FSIS are outside the scope of this rulemaking. However, meat products are inspected at ports of entry for compliance with APHIS requirements, and APHIS monitors the animal health status of foreign regions on an ongoing basis. Regarding vaccination, as stated in the proposed rule, FMD vaccination presents an FMD risk in terms of immunological response. Accordingly, the proposed rule was not predicated on Paraguay's vaccination regime but rather the results of its import risk analysis.

One of the above commenters stated that Brazil plays a leading role in Paraguay's beef industry, particularly in terms of ownership of their slaughterhouses. The commenter asked if APHIS evaluated slaughterhouses as part of our analysis.

APHIS did evaluate slaughterhouses as part of our analysis. The results of the APHIS evaluation indicate that Paraguay has effective animal health and animal disease emergency response systems in place.

One commenter noted political instability in Paraguay and asked if this had disrupted their sanitary systems.

We have no evidence that political instability has disrupted Paraguay's sanitary efforts; however, as noted above, we constantly monitor our trading partners for shifts in disease status.

A commenter noted a shift from grass-finished to grain-finished cattle in Paraguay and cited a USDA report in support of this assertion. The commenter suggested this shift could affect the conclusions of our risk assessment.

As the commenter noted, this shift is incremental and grass-fed beef still accounts for the majority of beef production in Paraguay, a fact that many commenters underscored. The article cited by the commenter also supports the gradual nature of this shift, noting that specific natural weather conditions in Paraguay had been a primary factor in the shift, as producers resorted to alternative feeds such as hay, forage, and grains to finish their cattle. The report suggests this shift was driven by a specific need, rather than indicative of an overall trend in production practices.

Finally, the manner in which cattle are finished in Paraguay also does not materially impact the conclusions of the risk analysis or the mitigation structure of the proposed rule; grain-finishing is not generally correlated with FMD risk. We likewise note that the mitigations of the proposed rule that are specifically intended to denature FMD or remove FMD risk, particularly the maturation and deboning processes, are similarly effective regardless of whether the beef is grass-fed or grain-finished.

Economic Comments

We received a number of comments regarding the Initial Regulatory Flexibility Analysis and Regulatory Impact Analysis (RIA) that accompanied the proposed rule. These comments are addressed within the RIA that accompanies this final rule.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this final rule on small entities. Copies of the full analysis are available on the *Regulations.gov*[6] website (see footnote 6 in this document for a link to *Regulations.gov*) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

This final rule will allow importation of fresh beef from Paraguay into the United States under specified conditions. With few exceptions, APHIS' regulations in 9 CFR part 94 prohibit the importation of fresh (chilled or frozen) meat of ruminants or swine that originates in or transits a region where FMD is considered to exist. APHIS does not consider Paraguay as free of FMD because Paraguay vaccinates against FMD.

The United States is the world's largest beef producer, primarily of grain-fed beef for the domestic and export markets. Over the 5-year period, 2018 to 2022, the United States produced an annual average of about 12 million metric tons of beef, exported about 1.4 million metric tons, and imported about 1.4 million metric tons. Most U.S. beef imports are products from grass-fed cattle. These products are processed together with higher-fat trimmings from U.S. grain-fed beef to produce ground beef. Canada, Australia, New Zealand, and Mexico historically have been the largest sources of U.S. beef imports.

Paraguay's cattle industry is one of the country's major agricultural

[6] To view the economic analysis, go to *https://www.regulations.gov/docket/APHIS-2018-0007/document.*

activities. Along with soybeans, beef is one of Paraguay's leading exports. Ongoing structural changes to the country's beef industry are occurring, as cattle ranching is displaced from traditional production areas by increased soybean acreage and grain is increasingly used to supplement beef cattle feeding regimes. About 65 percent of Paraguayan beef was exported over the 5 years, 2018–2022 (372,000 of 582,000 MT), a quantity equivalent to approximately 26 percent of U.S. fresh beef imports for the same period.

As a measure of possible impacts of fresh beef imports from Paraguay, we consider import volumes of 3,250 to 6,500 MT, that is, 5 to 10 percent of the Other Countries or Areas tariff-rate-quota of 65,005 MT. For each of the annual import levels, we modeled changes in U.S. consumption, production, and price, deriving annual consumer and producer welfare effects. The results of the analysis indicate that consumer gains of $14 million to $27 million would outweigh producer losses of $12 million to $24 million, yielding annual net social welfare gains of $1.6 million to $3 million. We also expect a portion of the beef imported from Paraguay will displace beef that would otherwise be imported from other countries.

Small entities in the United States are predominant among enterprises that would be affected by this rulemaking. They include beef and cattle producers, as well as feedlots and slaughter facilities. Of the 882,692 farms in the United States with cattle and calves, 711,827 sold cattle and calves, 729,046 were classified as beef cow farms, and 54,599 had milk cows. Based on these data and Small Business Administration standards, the majority of these entities are small.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the importation of fresh (chilled or frozen) beef from Paraguay under the conditions specified in this final rule will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, APHIS has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the *Regulations.gov* website.[7] Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1620, South Building, 14th Street and Independence Avenue SW, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 799–7039 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule, which were filed under 0579–0487, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the **Federal Register** providing notice of what action we plan to take.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this final rule, please contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—FOOT-AND-MOUTH DISEASE, NEWCASTLE DISEASE, HIGHLY PATHOGENIC AVIAN INFLUENZA, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, SWINE VESICULAR DISEASE, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 1633, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Amend § 94.29 as follows:

■ a. In the introductory text, by adding the words ''fresh (chilled or frozen) beef from Paraguay;'' after the word ''Tocantins;'';

■ b. In paragraph (a)(1), by adding the words ''or in Paraguay;'' after the word ''Brazil'';

■ c. In paragraph (b), by adding the words ''in Paraguay (for beef from Paraguay),'' after the words ''(for beef from Brazil),''; and

■ d. By revising the OMB citation at the end of the section.

The revision reads as follows:

§ 94.29 Restrictions on importation of fresh (chilled or frozen) beef and ovine meat from specified regions.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0579–0372, 0579–0414, 0579–0428, 0579–0449, and 0579–0487)

Done in Washington, DC, this 3rd day of November 2023.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–24782 Filed 11–13–23; 8:45 am]

BILLING CODE 3410–34–P

[7] To view the environmental assessment, go to *https://www.regulations.gov/docket/APHIS-2018-0007.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1490; Project Identifier MCAI–2022–01624–E; Amendment 39–22580; AD 2023–21–08]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021–21–13 for certain Rolls-Royce Deutschland Ltd & Co KG (RRD) Model Trent 1000 engines. AD 2021–21–13 required the operator to revise the airworthiness limitation section (ALS) of their existing approved aircraft maintenance program (AMP) by incorporating the revised tasks of the applicable time limits manual (TLM) for each affected model engine. Since the FAA issued AD 2021–21–13, the manufacturer has revised the TLM, introducing new and more restrictive instructions. This AD is prompted by the manufacturer revising the engine TLM life limits of certain critical rotating parts. This AD requires revisions to the ALS of the operator's existing approved AMP, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 19, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 19, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1490; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For EASA service information identified in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–1490.

FOR FURTHER INFORMATION CONTACT: Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7241; email: *sungmo.d.cho@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2021–21–13, Amendment 39–21773 (86 FR 64066, November 17, 2021), (AD 2021–21–13). AD 2021–21–13 applied to certain RRD Model Trent 1000 engines. AD 2021–21–13 required the operator to revise the ALS of their existing approved AMP by incorporating the revised tasks of the applicable TLM for each affected model engine. The FAA issued AD 2021–21–13 to prevent the failure of critical rotating parts.

The NPRM published in the **Federal Register** on July 14, 2023 (88 FR 45106). The NPRM was prompted by AD EASA AD 2022–0259, dated December 20, 2022 (EASA AD 2022–0259) (referred to after this as the MCAI), issued by EASA, which is the Technical Agent for the Member States of the European Union. The MCAI states that the manufacturer published a revised TLM introducing new or more restrictive tasks and limitations. These new or more restrictive tasks and limitations include updating declared lives of certain critical parts, updating direct accumulation counting data files, and updated inspections.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1490.

In the NPRM, the FAA proposed to require revisions to the ALS of the operator's existing approved AMP.

Discussion of Final Airworthiness Directive

Comments

The FAA received one comment from The Boeing Company (Boeing). Boeing supported the NPRM without change.

Conclusion

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting the AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0259, which specifies instructions for accomplishing the actions specified in the applicable TLM, including performing maintenance tasks, replacing life-limited parts, and revising the existing approved maintenance or inspection program, as applicable, by incorporating the limitations, tasks, and associated thresholds and intervals described in the TLM. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Differences Between This AD and the MCAI

Where EASA AD 2022–0259 defines the AMP as the Aircraft Maintenance Programme, which contains the tasks on the basis of which the scheduled maintenance is conducted to ensure the continuing airworthiness of each operated engine, this AD defines the AMP as the Aircraft Maintenance Program, which contains the tasks of which the operator or the owner ensures the continuing airworthiness of each operated airplane.

Where paragraph (3) of EASA AD 2022–0259 specifies revising the approved Aircraft Maintenance Programme within 12 months after the effective date of EASA AD 2022–0259, this AD requires revising the ALS of the existing approved maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

Costs of Compliance

The FAA estimates that this AD affects 28 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise the ALS	1 work-hours × $85 per hour = $85	$0	$85	$2,380

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA has determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2021–21–13, Amendment 39–21773 (86 FR 64066, November 17, 2021); and

■ b. Adding the following new airworthiness directive:

2023–21–08 Rolls-Royce Deutschland Ltd & Co KG: Amendment 39–22580; Docket No. FAA–2023–1490; Project Identifier MCAI–2022–01624–E.

(a) Effective Date

This airworthiness directive (AD) is effective December 19, 2023.

(b) Affected ADs

This AD replaces AD 2021–21–13, Amendment 39–21773 (86 FR 64066, November 17, 2021).

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) Model Trent 1000–A, Trent 1000–AE, Trent 1000–C, Trent 1000–CE, Trent 1000–D, Trent 1000–E, Trent 1000–G, and Trent 1000–H engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7200, Engine (Turbine/Turboprop).

(e) Unsafe Condition

This AD was prompted by the manufacturer revising the engine Time Limits Manual life limits of certain critical rotating parts. The FAA is issuing this AD to prevent the failure of critical rotating parts. The unsafe condition, if not addressed, could result in failure of critical rotating parts, which could result in failure of one or more engines, loss of thrust control, and loss of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions

Except as specified in paragraph (h) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0259, dated December 20, 2022 (EASA AD 2022–0259).

(h) Exceptions to EASA AD 2022–0259

(1) Where EASA AD 2022–0259 defines the AMP as the Aircraft Maintenance Programme, which contains the tasks on the basis of which the scheduled maintenance is conducted to ensure the continuing airworthiness of each operated engine, this AD defines the AMP as the Aircraft Maintenance Program, which contains the tasks of which the operator or the owner ensures the continuing airworthiness of each operated airplane.

(2) Where EASA AD 2022–0259 refers to its effective date, this AD requires using the effective date of this AD.

(3) This AD does not require compliance with paragraph (1) of EASA AD 2022–0259.

(4) This AD does not require compliance with paragraph (2) of EASA AD 2022–0259.

(5) Where paragraph (3) of EASA AD 2022–0259 specifies revising the approved Aircraft Maintenance Programme within 12 months after the effective date of EASA AD 2022–0259, this AD requires revising the airworthiness limitations section of the existing approved maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(6) This AD does not adopt the "Remarks" paragraph of EASA AD 2022–0259.

(i) Provisions for Alternative Actions and Intervals

After performing the actions required by paragraph (g) of this AD, no alternative actions and associated thresholds and intervals, including life limits, are allowed unless they are approved as specified in the provisions of the "Ref. Publications" section of EASA AD 2022–0259.

(j) Alternative Methods of Compliance (AMOCs)

The Manager, AIR–520 Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the AIR–520 Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (k) of this AD and email to: *ANE-AD-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Additional Information

For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7241; email: *sungmo.d.cho@faa.gov.*

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0259, dated December 20, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0259, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–1490.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.*

Issued on October 20, 2023.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–25099 Filed 11–13–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2150; Project Identifier MCAI–2023–00188–R; Amendment 39–22603; AD 2023–23–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2022–01–05, which applied to certain Airbus Helicopters Model EC130T2 helicopters. AD 2022–01–05 required repetitive visual inspections of the rivets on the rear transmission shaft bearing support, inspections of the local structure, and rivet heads on the left-hand and right-hand sides of the rear transmission shaft bearing support for cracking, missing, loose, or sheared rivets. AD 2022–01–05 also required reporting the results of those inspections and depending on the results, applicable corrective action. Since the FAA issued AD 2022–01–05, Airbus Helicopters revised its service information to add procedures to improve visual inspections of the rivets on the rear transmission shaft bearing support. This AD was prompted by the determination that certain modified helicopters may have finishing paint applied to the gutter, which could prevent detection of cracks during inspections. This AD also extends the repetitive compliance time interval for certain inspections. This AD continues to require certain actions in AD 2022–01–05 and requires a one-time visual inspection for paint in the gutter area, and removal of paint if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 29, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 29, 2023.

The FAA must receive comments on this AD by December 29, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–2150; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material identified in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.*
- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222 5110. It is also available at *regulations.gov* under Docket No. FAA–2023–2150.

Other Related Service Information: For Airbus Helicopters service information identified in this final rule, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; phone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *airbus.com/en/products-services/helicopters/hcare-services/airbusworld.* You may also view this service information at the FAA contact information under *Material Incorporated by Reference* above.

FOR FURTHER INFORMATION CONTACT: Dan McCully, Program Manager, International Validation Branch, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (404) 474–5548; email *william.mccully@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–2150; Project Identifier MCAI–2023–00188–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Dan McCully, Program Manager, International Validation Branch, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (404) 474–5548; email *william.mccully@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2022–01–05, Amendment 39–21893 (86 FR 74353, December 30, 2021) (AD 2022–01–05), for certain Airbus Helicopters Model EC130T2 helicopters. AD 2022–01–05 was prompted by EASA Emergency AD 2021–0283–E, dated December 17, 2021 (EASA AD 2021–0283–E) originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA AD 2021–0283–E was issued to correct an unsafe condition on certain Airbus Helicopters Model EC130T2 helicopters. AD 2022–01–05 required repetitive visual inspections of the rivets on the rear transmission upper and lower bearing support, the local structure, and the rivet heads on the left-hand and right-hand sides of the rear transmission shaft bearing support. The FAA issued AD 2022–01–05 to address sheared attachment rivets of the transmission shaft bearing support and prevent failure of the tail rotor drive shaft and subsequent loss of yaw control of the helicopter.

Actions Since AD 2022–01–05 Was Issued

Since the FAA issued AD 2022–01–05, EASA superseded EASA AD 2021–0283–E by issuing EASA AD 2021–0283R1, dated February 11, 2022; corrected February 25, 2022 (EASA AD 2021–0283R1), to extend both the repetitive compliance time to accomplish the inspections of the rivets on the rear transmission shaft bearing support and of the local structure, and the repetitive compliance time to accomplish the inspections of the rivet heads of the rear bearing support. Thereafter, EASA superseded EASA AD 2021–0283R1 by issuing EASA AD 2023–0028, dated February 1, 2023 (EASA AD 2023–0028), to correct an unsafe condition on Airbus Helicopters Model EC 130 T2 helicopters with AH modification 074581 incorporated in production. EASA AD 2023–0028 states some helicopters were identified to have finishing paint applied on the gutter, which could prevent the detection of cracks during required visual inspections. In light of this, Airbus Helicopters revised its service information to provide instruction to inspect for paint, and if necessary, removing paint from the gutter. Accordingly, EASA AD 2023–0028 retains the requirements of EASA AD 2021–0283R1 and also requires a one-time visual inspection of the gutter and if necessary, removal of paint in this area. EASA considers its AD an interim action and states that further AD action may follow. See EASA AD 2023–0028 for additional background information.

You may examine EASA AD 2023–0028 in the AD docket at *regulations.gov* under Docket No. FAA–2023–2150.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0028 requires repetitive visual inspections of the rivets on the rear transmission upper and lower bearing support, the local structure, and the rivet heads on the left-hand and right-hand sides of the rear transmission shaft bearing support. EASA AD 2023–0028 also requires a one-time visual inspection of the gutter for finishing paint. Depending on the results, EASA AD 2023–0028 requires contacting Airbus Helicopters to obtain approved repair instructions and accomplishing those instructions, or replacing each affected rivet. EASA AD 2023–0028 also requires removing any paint in the specified gutter area of the helicopter. Lastly, EASA AD 2023–0028 requires reporting inspection findings to Airbus Helicopters.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Other Related Service Information

The FAA also reviewed Airbus Helicopters Emergency Alert Service Bulletin (EASB) No. EC130–05A039, Revision 4, dated March 15, 2023 (EC130–05A039 Rev 4). This service information specifies procedures for repetitive visual inspections of the rear transmission bearing support areas, including the frame and skin in the area of the bearing supports, as well as repetitive visual inspections of the rivets on the left-hand and right-hand sides of the rear transmission shaft bearing support located under the Teflon tape on the tail boom. Additionally, this service information specifies procedures for a one-time visual inspection of the gutter area for paint and if necessary, removal of paint.

EASB EC130–05A039 Rev 4 also distinguishes between procedures for helicopters that do and do not have the tail drive shaft bearing support reinforcement (MOD 0720245) installed.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA of the unsafe condition described in its AD. The FAA is issuing this AD after evaluating all pertinent information and determining that the unsafe condition exists and is likely to exist or develop on other helicopters of the same type design.

AD Requirements

This AD retains certain requirements of AD 2022–01–05. This AD also requires accomplishing the actions specified in EASA AD 2023–0028, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under ''Differences Between this AD and EASA AD 2023–0028.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2023–0028 will be incorporated by reference in this FAA final rule. This AD would, therefore, require compliance with EASA AD 2023–0028 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0028 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0028. Service information referenced in EASA AD 2023–0028 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2023–2150.

Differences Between This AD and EASA AD 2023–0028

EASA AD 2023–0028 requires using Airbus Helicopters EASB No. EC130–05A039, Revision 3, dated January 30, 2023, for compliance, whereas this AD does not and instead requires using Revision 4, dated March 15, 2023. The service information referenced in EASA AD 2023–0028 specifies that certain procedures may be done by a pilot with correct training and accreditation, or a pilot-owner, whereas this AD requires those actions be accomplished by persons authorized under 14 CFR 43.3. Depending on certain inspection results, EASA AD 2023–0028 specifies contacting Airbus Helicopters to obtain approved repair instructions and accomplishing those instructions, whereas this AD requires that repairs be done in accordance with a method approved by the FAA, EASA, or Airbus Helicopters' EASA Design Organization Approval. EASA AD 2023–0028 requires reporting certain information to Airbus Helicopters within 30 days after each rivet replacement, whereas this AD requires reporting that information within 10 days after each rivet replacement or within 10 days after the effective date of this AD.

EASA AD 2023–0028 allows credit for the initial instance of certain actions accomplished before its effective date, whereas this AD allows credit for any instance of certain actions accomplished before the effective date of this AD.

Interim Action

The FAA considers that this AD is an interim action. If final action is later identified, the FAA might consider further rulemaking then.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for "good cause," finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because sheared attachment rivets of the transmission shaft bearing support could lead to failure of the tail rotor drive shaft, which is an assembly that is critical to the control of a helicopter. The FAA has no information pertaining to how quickly the condition may propagate to failure. In addition, it has been identified that helicopters with finishing paint applied to the gutter could prevent detection of the unsafe condition. In light of this, the compliance times for the required actions are shorter than the time necessary for the public to comment and for publication of the final rule. Inspections of the rivets on the rear transmission shaft bearing support and of the local structure, and inspections of the rivet heads of the rear bearing support must be continued from AD 2022–01–05 within intervals not to exceed 10 hours time-in-service. Depending on the inspection status of a helicopter, inspecting for the presence of paint applied on the gutter must be accomplished within 10 hours time-in-service or 7 days, whichever occurs first, or before exceeding 10 hours time-in-service since the latest inspection. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 119 helicopters of U.S. registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Inspecting the rivets and local structure takes about 0.5 work-hour for an estimated cost of about $43 per helicopter and up to $5,117 for the U.S. fleet, per inspection cycle. Removing the Teflon tape and inspecting the rivet heads takes about 0.5 work-hour for an estimated cost of about $43 per helicopter and up to $5,117 for the U.S. fleet, per inspection cycle. The corrective action that may be needed as a result of the inspection could vary significantly from helicopter to helicopter. The FAA has no data to determine the costs to accomplish the corrective action or the number of helicopters that may require corrective action.

Replacing a rivet takes about 0.5 work-hour and parts cost up to $20 for an estimated cost of up to $63 per rivet.

Inspecting and if necessary, removing paint from the gutter area takes about 0.5 work-hour for an estimated cost of up to $43 per helicopter.

Reporting information takes about 1 work-hour for an estimated cost of $85 per helicopter, per instance.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866, and

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2022–01–05, Amendment 39–21893 (86 FR 74353, December 30, 2021); and

■ b. Adding the following new airworthiness directive:

2023–23–01 Airbus Helicopters: Amendment 39–22603; Docket No. FAA–2023–2150; Project Identifier MCAI–2023–00188–R.

(a) Effective Date

This airworthiness directive (AD) is effective November 29, 2023.

(b) Affected ADs

This AD replaces AD 2022–01–05, Amendment 39–21893 (86 FR 74353, December 30, 2021) (AD 2022–01–05).

(c) Applicability

This AD applies to Airbus Helicopters Model EC130T2 helicopters, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2023–0028, dated February 1, 2023 (EASA AD 2023–0028).

(d) Subject

Joint Aircraft System Component (JASC) Code: 5300, Fuselage Structure.

(e) Unsafe Condition

This AD was prompted by a report of degradation of the rear transmission shaft bearing support and the determination that all the attachment rivets of the transmission shaft bearing support were sheared. Also, it has been reported that some attachment rivets of the transmission shaft bearing may have been painted over, preventing detection of this unsafe condition. The FAA is issuing this AD to address sheared attachment rivets of the transmission shaft bearing support. This condition, if not addressed, could lead to failure of the tail rotor drive shaft and subsequent loss of yaw control of the helicopter.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0028.

(h) Exceptions to EASA AD 2023–0028

(1) Where EASA AD 2023–0028 defines ''the ASB'' as ''AH Emergency Alert Service Bulletin (ASB) EC130–05A039 Revision 3;'' for this AD, replace that definition with ''Airbus Helicopters Emergency Alert Service Bulletin No. EC130–05A039, Revision 4, dated March 15, 2023.''

(2) Where EASA AD 2023–0028 refers to November 1, 2021 (the effective date of EASA Emergency AD 2021–0235–E, dated October 28, 2021), this AD requires using December 9, 2021 (the effective date of AD 2021–24–06, Amendment 39–21827 (86 FR 66934, November 24, 2021).

(3) Where EASA AD 2023–0028 refers to December 21, 2021 (the effective date of EASA AD 2021–0283–E, dated December 17, 2021), this AD requires using January 14, 2022 (the effective date of AD 2022–01–05).

(4) Where EASA AD 2023–0028 refers to its effective date, this AD requires using the effective date of this AD.

(5) Where EASA AD 2023–0028 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(6) Where the service information referenced in EASA AD 2023–0028 specifies that certain inspections can be done by a mechanical technician, a pilot with correct training and accreditation, or a pilot-owner, this AD requires that those inspections be accomplished by persons authorized under 14 CFR 43.3.

(7) Where paragraphs (4) and (5) of EASA AD 2023–0028 specify contacting Airbus Helicopters to obtain approved repair instructions and accomplishing those instructions within the compliance time(s) specified therein, this AD requires, before further flight, repair done in accordance with a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus Helicopters' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(8) Where paragraph (8) of EASA AD 2023–0028 requires reporting inspection results to Airbus Helicopters within 30 days after each rivet replacement, this AD requires reporting inspection results at the applicable time in paragraph (h)(8)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 10 days after each rivet replacement.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

(9) Instead of the credit allowed in paragraph (9) of EASA AD 2023–0028, you may take credit for the following; ''Inspection(s) and corrective action(s) required by paragraphs (1), (2), and (6) of EASA AD 2023–0028 that have been accomplished before the effective date of this AD using Airbus Helicopters Emergency Alert Service Bulletin No. EC130–05A039 original issue, dated October 27, 2021; Revision 1, dated December 16, 2021; Revision 2, dated February 9, 2022; or Revision 3, dated January 30, 2023.''

(10) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0028.

(i) Special Flight Permits

Special flight permits may be permitted to accomplish the actions required by paragraphs (1) and (2) of EASA AD 2023–0028 provided that there are no passengers on board. Special flight permits are prohibited for any other actions required by this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Related Information

For more information about this AD, contact Dan McCully, Program Manager, International Validation Branch, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (404) 474–5548; email *william.mccully@faa.gov.*

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of

the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2023–0028, dated February 1, 2023.

(ii) [Reserved]

(3) For EASA material, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.*

Issued on November 6, 2023.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–25185 Filed 11–9–23; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 89

[Docket No. FAA–2022–0859]

Accepted Means of Compliance; Remote Identification of Unmanned Aircraft; Correction

AGENCY: Federal Aviation Administration, DOT

ACTION: Acceptable means of compliance; notice of availability; correction.

SUMMARY: The FAA is correcting a notice of availability (NOA) published on August 11, 2022 (87 FR 49520). In that NOA, the FAA provided an acceptable means of compliance (MOC) in accordance with a rule issued by the FAA on January 21, 2021, that went into effect on April 21, 2021. In that NOA, the FAA accepted ASTM International (ASTM) F3586–22, with additions identified, as an acceptable means, but not the only means of demonstrating compliance with the requirements for producing standard remote identification unmanned aircraft and remote identification broadcast modules. The FAA is correcting the means of compliance of ASTM F3586–22 by correcting a typographical reference error in Table 3 and clarifying a testing requirement by revising a heading and adding clarifying language, as noted in the ''Means of Compliance Accepted In This Policy'' section of this document. This document includes acceptance of previously accepted MOCs with the corrections described.

DATES: This corrective action is effective November 14, 2023.

FOR FURTHER INFORMATION CONTACT:

FAA Contact: Avi Acharya, Avionics Communications & Surveillance Unit, AIR–626C, Technical Policy Branch, Policy & Standards Division, Aircraft Certification Service, Federal Aviation Administration, AIR–600: 800 Independence Ave. SW, Washington, DC 20591; telephone 1–844–FLY–MY–UA; email: *UASHelp@faa.gov.*

ASTM Contact: Gabriel Cox, Chair, ASTM Remote ID Workgroup, 7325 NE Imbrie Drive #231, Hillsboro, OR 97124; Telephone 1–503–941–0099; email: *gcox@coxdata.com.*

SUPPLEMENTARY INFORMATION:

Background

Title 14 Code of Federal Regulations, part 89 establishes remote identification requirements for unmanned aircraft operated in the airspace of the United States. With a few exceptions, unmanned aircraft produced for operation in the airspace of the United States are subject to the production requirements of part 89. A person producing a standard remote identification unmanned aircraft or remote identification broadcast module for operation in the United States must show that the unmanned aircraft or broadcast module meets the requirements of subpart D of part 89 by following an FAA-accepted means of compliance (MOC).

An FAA-accepted MOC describes one means by which a person may comply with the minimum performance requirements for remote identification in subpart D of part 89. To be accepted by the FAA, an MOC must meet the requirements of both subparts D and E of part 89. The MOC must address the minimum performance requirements, as well as the testing and validation necessary to demonstrate compliance with the part 89 subpart D requirements. The FAA indicates its acceptance of an MOC by publishing a Notice of Availability in the **Federal Register** identifying the MOC as accepted and informing the applicant of its acceptance.[1]

[1] 14 CFR part 89, subpart D.

A holder of an FAA-accepted MOC notified the FAA of a typographical error in a table and a deficient testing requirement in its FAA-accepted MOC, as discussed in the ''Means of Compliance Accepted In This Policy'' section of this document. This document includes acceptance of the previously accepted MOC with the requested corrections and describes the effect on existing Declaration of Compliance (DOC) holders based on the previously accepted MOC and on new and revised DOC submittals.

Means of Compliance Accepted in This Policy

On August 10, 2022, the FAA accepted ASTM ''Standard Practice for Remote ID Means of Compliance to Federal Aviation Administration Regulation 14 CFR part 89'', ASTM F3586–22, with certain additions, as an MOC to the requirements of part 89 Subpart D in NOA Docket No. FAA–2022–0859.

The FAA has determined that a correction to the typographical error in table 3 of the FAA-accepted ASTM F3586–22 MOC standard, and a clarification to a deficient testing requirement in section 8.6 of the ASTM standard are necessary.

The FAA-accepted MOC update provided in this NOA is comprised of the MOC in Docket No.FAA–2022–0859 (*i.e.,* ASTM F3586–22, with the FAA-specified additions) with the following corrections:

1. F3586–22 Table 3, 89.320(h)(5), page 11, line 5: The test method must be MOC section 8.6, not section 8.9.3.
2. F3586–22 Section 8.6: revise heading to—*Broadcast Protocol, Message Elements, Periodicity and Latency Testing:*
3. F3586–22 Section 8.6: Add the following—In addition to the passing criteria, using a time-accurate test setup, the difference in time between the broadcasted timestamp and received packet time must be measured to be less than or equal to 1 second.

Effect of This Notice on Current FAA-Accepted Declarations of Compliance

Current valid FAA-accepted DOC for a standard remote identification unmanned aircraft or remote identification broadcast module that used the original FAA-accepted MOC (including all provisions of ASTM F3586–22 and the additions identified in NOA Docket No.FAA–2022–0859) with tracking number RID–ASTM–F3586–22–NOA–22–01 remain FAA-accepted, and holders of those DOC do not need to resubmit a DOC for the MOC in this document.

Effect of This Action on New and Revised Declaration of Compliance Submittals

Effective upon issuance of this NOA, the FAA will no longer accept new or revised DOC submissions using the original MOC identified in NOA Docket No. FAA–2022–0859. Applicants must submit new and revised DOC submittals using the MOC in this document and must use the tracking number identified in ''Tracking Number'' below.

Tracking Number

Producers submitting a new or revised DOC to the FAA declaring the standard remote identification unmanned aircraft or remote identification broadcast module meets the requirements of this FAA-accepted MOC (including all provisions of ASTM F3586–22, the additions identified in NOA Docket No.FAA–2022–0859, and the corrections to ASTM F3586–22 identified in this document) must include the following tracking number: RID–ASTM–F3586–22–NOA–23–01.

Availability

ASTM F3586–22, ''Standard Practice for Remote ID Means of Compliance to Federal Aviation Administration Regulation 14 CFR part 89,'' is available online at *https://www.astm.org/f3586-22.html.* ASTM International copyrights these consensus standards and charges the public a fee for service. Individual downloads or reprints of a standard (single or multiple copies, or special compilations and other related technical information) may be obtained through *www.astm.org.* The FAA maintains a list of accepted means of compliance on the FAA website at *www.https://uasdoc.faa.gov/listMOC.*

This NOA serves as acceptance by the Federal Aviation Administration of the ASTM Remote Identification Standard F3586–22, with additions specified in NOA Docket No.FAA–2022–0859 and corrections to ASTM F3586–22 specified in this NOA, as a means of compliance for meeting the requirements of part 89, subpart D.

Issued in Kansas City, Missouri, on October 13, 2023.

Patrick R. Mullen,

Manager, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service.

[FR Doc. 2023–23058 Filed 11–13–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 67

[Docket No. USCG–2023–0305]

RIN 1625–AC87

Multi-Year Certificate of Documentation for Recreational Vessel Owners

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is issuing a final rule for recreational vessel owners to select a recreational vessel endorsement on a Certificate of Documentation (COD) with a validity of 1, 2, 3, 4, or 5 years. Currently, our regulations require that a COD will be effective for a 5-year period. Congress passed, and the President signed, the self-executing National Defense Authorization Act of 2022 (2022 Act), which directs the Coast Guard to issue recreational vessel CODs for 1, 2, 3, 4, or 5 years. By updating the Code of Federal Regulations (CFR) to reflect this change, this final rule harmonizes the requirements of the 2022 Act, aligns CFR text with current Coast Guard policy, and provides vessel owners' statutorily directed option to select the validity period of their COD that best suits their individual needs.

DATES: This final rule is effective December 14, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov,* type USCG–2023–0305 in the search box, and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Mr. Ronald Teague, Department of Homeland Security, U.S. Coast Guard, National Vessel Documentation Center, 792 T J Jackson Drive, Falling Waters, WV 25419; telephone 304–271–2506, email *Ronald.S.Teague@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Abbreviations

2018 Act Frank LoBiondo Coast Guard Authorization Act of 2018
2021 final rule Certificate of Documentation—5 Year Renewal Fees final rule
2022 Act National Defense Authorization Act for Fiscal Year 2022
CFR Code of Federal Regulations
COD Certificate of Documentation
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
NVDC National Vessel Documentation Center
OMB Office of Management and Budget
§ Section
SME Subject matter expert
U.S.C. United States Code

II. Basis and Purpose, and Regulatory History

The legal basis for this final rule is found in Section 3511 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81, 135 Stat. 2238) (2022 Act), which the President signed on December 27, 2021. The 2022 Act directed the Coast Guard to allow an owner of a vessel with only a recreational endorsement to choose a Certificate of Documentation (COD) validity period of 1, 2, 3, 4, or 5 years.

The Coast Guard finds that good cause exists under the Administrative Procedure Act, Title 5 of the United States Code (U.S.C.), Section 553, to issue a final rule and dispense with notice and comment procedures. Prior notice and opportunity to comment on this rule are unnecessary under 5 U.S.C. 553(b)(B) because Section 3511 of the 2022 Act provides the Coast Guard no discretion in adopting the specific timeframes for issuance or renewal of recreational vessel CODs. Section 3511 of the 2022 Act does not allow for alternatives. It does not permit the Coast Guard to decide upon a different timeframe for renewal, choose to adopt a different renewal period, or respond to public comments by modifying the substance of the rule. Therefore, soliciting public comment on the correct time period for COD renewal for a recreational vessel, or on the decision to update the regulations to comport with the statutory mandate, is unnecessary. It should be noted that the Coast Guard has already implemented the requirements of Section 3511 of the

2022 Act and is presently issuing multi-year CODs to recreational vessels of at least 5 net tons. In addition, this good cause applies to formatting changes, for clarity, to the fee table in title 46 of the Code of Federal Regulations (CFR) section 67.550. These changes have no substantive effect on the public.

III. Background

Before 2019, the Coast Guard issued CODs for a validity period of 1 year only. Section 512 of the Frank LoBiondo Coast Guard Authorization Act of 2018 (2018 Act) (Pub. L. 115–282, 132 Stat. 4275), codified at 46 U.S.C. 12105, specified that, in 2022, recreational vessels would be issued CODs with a validity period of 5 years. The 2018 Act provided a phase-in period, January 2019 through December 2021, during which recreational vessel owners could select an effective period for CODs for recreational vessels between 1 and 5 years.[1] In January 2021, the Coast Guard published a final rule titled ''Certificate of Documentation—5 Year Renewal Fees'' (hereafter the ''2021 final rule'') implementing those changes (86 FR 5022).[2]

The purpose of this final rule is to meet the Congressional mandate contained in Section 3511 of the 2022 Act, wherein Congress determined that the Coast Guard shall allow the issuance of a recreational endorsement on CODs with a validity period of 1, 2, 3, 4, or 5 years, instead of the previously mandated period of 5 years.

IV. Discussion of the Rule

The 2022 Act authorizes the owner or operator of a recreational vessel to choose a period of effectiveness between 1 and 5 years for a certificate of documentation for a recreational vessel or the renewal thereof. This rule will bring current Coast Guard regulations in line with this self-executing provision of the 2022 Act. As discussed in section III., Background, the 2018 Act created a multi-year COD phase-in period in anticipation of moving to a 5-year-only validity period for recreational vessel CODs. This 5-year-only COD validity period was anticipated to go into effect on January 1, 2022. However, Congress determined that preserving a multi-year choice of the validity period was in the best interest of recreational vessel owners. As such, the 2022 Act was signed by the President in December 2021, and the 5-year-only COD that was to go into effect on January 1, 2022, was never implemented by the Coast Guard. Instead, the Coast Guard carried out Congress' desire to continue to allow recreational vessel owners and operators the ability to choose a 1-, 2-, 3-, 4-, or 5-year COD.

The Coast Guard made the public aware of this fact on the home page of the website for the National Vessel Documentation Center (NVDC), which processes vessel COD applications and renewals.[3] Additionally, the ability to select from multiple validity periods for recreational vessel CODs is still present in NVDC instruction documentation,[4] the initial application form CG–1258,[5] and the renewal form CG–1280.[6]

Currently, 46 CFR 67.163(a) states that recreational endorsements on a COD are valid for 5 years. In line with the 2022 Act, the Coast Guard amends this section to reflect that recreational endorsements on CODs can be valid for 1, 2, 3, 4, or 5 years. Additionally, the Coast Guard is editing paragraph (c) of § 67.163 to reflect that recreational endorsements on CODs can be valid for 1, 2, 3, 4, or 5 years. This is necessary for continuity, given the references to this section. The Coast Guard is also amending 46 CFR 67.163(b) to remove the word ''original'', as ''original'' is not relevant when referring to the CG–1280 Vessel Renewal Notification Application for Renewal.

Furthermore, the Coast Guard amends § 67.317 to reflect that recreational endorsements can be renewed for 1, 2, 3, 4, or 5 years. This amendment is necessary to ensure consistency with regulatory text in this section.

Lastly, the Coast Guard revises Table 1 to § 67.550. As recreational vessel CODs will continue to have a multi-year validity period, this change is necessary to reflect both the 2022 Act and the supporting regulatory text for this section. We deleted occurrences of ''through December 31, 2021'' as it references a phase-in period that has passed. Other formatting updates include separating commercial and recreational applications into two categories, moving notes to the end of the table, adding dollar signs in the ''Fee'' column, and deleting the ''Reference'' column as it is not used to calculate the fee amounts. The revised table layout will make it easier to distinguish application fees for commercial vessels from those for recreational vessels. It will also match the table of fees available to the public on NVDC's website. These changes are merely editorial in nature and will not change fee amounts or make any other substantive changes.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to the rulemaking. Below we summarize our analyses based on these statutes or Executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review) and 13563 (Improving Regulation and Regulatory Review), direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, OMB has not reviewed this regulatory action. A regulatory analysis follows.

Background

As discussed in section III., Background, the 2018 Act allowed for a phase-in period of 1, 2, 3, 4, or 5 years for CODs, but would have required strictly 5-year CODs as of January 1, 2022. However, in December of 2021, Congress passed the 2022 Act, which instructed the Coast Guard to amend the 2021 final rule to reflect a continuation of multi-year issuance for recreational vessel CODs; this effectively removed the strict 5-year COD requirement that was established under the 2018 Act and was codified under the 2021 final rule.

[1] *https://www.congress.gov/115/plaws/publ282/PLAW-115publ282.pdf* (last visited 04/26/2023).

[2] *https://www.federalregister.gov/documents/2021/01/19/2021-00526/certificate-of-documentation-5-year-renewal-fees* (last visited 04/26/2023).

[3] *https://www.dco.uscg.mil/Our-Organization/Deputy-for-Operations-Policy-and-Capabilities-DCO-D/National-Vessel-Documentation-Center/* (last visited 04/26/2023).

[4] *https://www.dco.uscg.mil/Portals/9/DCO%20Documents/NVDC/COD%20RENEWAL.pdf* (last visited 04/23/2023).

[5] *https://www.dco.uscg.mil/Portals/9/DCO%20Documents/NVDC/CG-1258.pdf?ver=MPJjdit5LaS5B0_IFJv_1A%3d%3d* (last visited 04/26/2023).

[6] *https://www.dco.uscg.mil/Portals/9/DCO%20Documents/NVDC/CG-1280_Renewal_of_Certificate_Of_Documentation.pdf?ver=WPHaCWFat5gjwLZ4nFiplA%3d%3d* (last visited 04/23/2023).

The Coast Guard Authorization Act of 2018 and the 2021 Final Rule

As previously discussed, the 2018 Act and the 2021 final rule would have provided COD holders with recreational endorsements the ability to request or renew documentation on a multi-year basis between 2019 and 2021. Beginning in January of 2022, according to the 2021 final rule, COD holders with recreational endorsements could have only requested or renew documentation for a period of 5 years. To provide clarity and assist in the discussion of the impacts of this final rule, a summary of the economic impacts for the 2021 final rule follows:

TABLE 1—APPLICABILITY, IMPACT AND COSTS OR COST-SAVINGS OF THE 2021 FINAL RULE

Category	Summary
Applicability	To reflect regulatory changes brought by the 2018 Act (Pub. L. 115–282), which directed the Coast Guard to change the validity period of CODs for recreational vessels to a 5-year option only, after a 3-year phase-in period, during which vessel owners could choose 1, 2, 3, 4, or 5 years.
Affected Population	162,647 vessels.
Benefits	The restructuring of CODs from an annual renewal to a 5-year renewal period would have reduced industry's annual time burden for submitting CODs applications. In addition, the Government would have benefited due to a reduction in the number of applications processed annually.
Cost savings (in 2022 dollars, 7% discount rate) *.	Estimated annualized cost-savings of about $5.9 million to Industry at 7-percent discount rate. Federal Government annualized cost-savings of about $8.4 million at 7-percent discount rate. Total annualized cost-savings of about $14.3 million.

* Totals may not add due to rounding.

2022 Act

The primary purpose of this final rule is to harmonize 46 CFR part 67 with current statutory requirements under the 2022 Act, as it pertains to recreational vessel owners who seek CODs on a multi-year basis. In effect, this final rule continues the phase-in period provision specified under the 2018 Act and the 2021 final rule, while removing the 5-year-only COD requirement from the CFR. As such, the impacts provided below are the result of the 2022 Act. We provide two tables that capture the changes in the CFR and economic impacts from the 2022 Act. Table 2 below presents the baseline matrix, which lists the changes between this final rule and the current language under the CFR, while table 5 summarizes the applicability, impact, costs or cost-savings, and benefits associated to the 2022 Act.

TABLE 2—BASELINE MATRIX—CHANGES BETWEEN THIS MULTIYEAR FINAL RULE AND THE 2021 FINAL RULE

Subpart	Description of change	Type of change	Economic impact
67.163(a)	Adds "1, 2, 3, 4, or" to the first paragraph (a)	Editorial	No economic impact.
67.163(b)	Removes "an original" from the second paragraph (b)	Editorial	No economic impact.
67.163(c)	Replaces "A certificate of documentation for a recreational vessel and the renewal of such a certificate shall be effective for a 5-year period. During the period beginning January 1, 2019, and ending December 31, 2021, the owner of a recreational vessel may choose a period of effectiveness of 1, 2, 3, 4, or 5 years for such a certificate of documentation for such vessel or the renewal thereof" with "A Certificate of Documentation for a recreational vessel and the renewal of such a certificate will be effective for 1, 2, 3, 4, or 5 years for such a Certificate of Documentation for such vessel or the renewal thereof".	Editorial/Economic	An estimated cost-savings to the public of $8.3 million annually in 2022 U.S. dollars, discounted at 7-percent.
67.317(a)	Replaces "must" with "can" from the first paragraph (a)	Editorial	No economic impact.
67.317(a)	Adds "for a period of " within the first paragraph (a)	Editorial	No economic impact.
67.317(a)	Removes "every" from the first paragraph (a)	Editorial	No economic impact.
67.317(a)	Adds "for a period of 1, 2, 3, 4, or" to the first paragraph (a)	Editorial	No economic impact.
67.550	Table 1 to 67.550 replaced with revised version, editorial changes only to harmonize with Fee Table from NVDC website.	Editorial	No economic impact.

Final Rule Costs

The fundamental purpose of this final rule is to codify the 2022 Act; therefore, this final rule does not add any new costs to the Government or the public, nor does it impose any new burden to either entity.

Final Rule Benefits

By amending current language in the CFR to reflect the provisions and requirements specified under the 2022 Act, the Coast Guard harmonizes 46 CFR part 67 with the 2022 Act. Confusion regarding the validity period for a recreational vessel COD will be eliminated, as the CFR will accurately reflect the law and NVDC policy. See table 3 below for a summary of impacts of this final rule.

TABLE 3—APPLICABILITY, IMPACT AND COSTS OR COST-SAVINGS OF THE 2022 ACT

Description	Affected population	Costs	Cost-savings	Benefits
The Coast Guard chooses to adopt this final rule and continue to allow COD documentation for 1, 2, 3, 4, or 5 years at vessel owners' discretion. The CFR is amended to reflect current statutory language and practice.	38,927 recreational vessels owners and operators of at least 5 net tons who were issued or renewed CODs for 5 years in 2022.	This final rule will not impose any new costs to Government or the public.	This final rule will yield an estimated cost-savings to the public of $8.3 million annually in 2022 U.S. dollars, discounted at 7%, by removing the 5-year only COD restriction.	The harmonization in language between the CFR and the 2022 Act eliminates confusion among the public or any potentially affected entity.

Affected Population

To determine the affected population for the 2022 Act and this final rule, it is helpful to first understand the distribution of multi-year CODs that vessel owners have been selecting. As noted in section III., Background, the NVDC has continued to offer multi-year COD expiration dates, which is in line with the 2022 Act. We obtained data from the NVDC, which processes vessel COD applications and renewals. As seen in table 4 below, this data consists of the number of CODs issued each year from 2019 to 2022. Table 6 also displays the validity period of CODs issued during this timeframe, ranging from 1, 2, 3, 4, or 5 years. For example, in 2019, the Coast Guard issued 165,599 recreational vessel CODs, of which the vast majority, 153,195, were 1-year CODs, 6,447 were 2-year CODs, 1,398 were 3-year CODs, and so on. We can use this information to track the pattern of consumer choices regarding the multi-year COD options.

TABLE 4—CROSS-TABULATION OF RECREATIONAL VESSEL CODS ISSUED BY YEAR AND VALIDITY PERIOD

Year	Total CODs issued	1 Year validity	2 Years validity	3 Years validity	4 Years validity	5 Years validity
2019	165,599	153,195	6,447	1,398	665	3,894
2020	163,771	148,491	7,497	1,617	632	5,534
2021	158,610	127,851	13,184	3,927	1,768	11,880
2022	143,944	81,776	6,942	2,398	2,021	50,807

We note from table 4 that, as we progress from 2019 to 2022, the number of 2,- 3,- and 4-year CODs remains relatively stable and only accounts for a small percentage of total recreational vessel CODs issued each year. We assume that vessel owners selected these duration terms for their CODs because they determined that this was their best and preferred choice. However, this trend does not hold for 1-year and 5-year CODs. We note that, from 2019 to 2022, the trend shifts significantly away from 1-year CODs and increases significantly to 5-year CODs. According to subject matter experts (SMEs), the nearly 5-fold increase in CODs issued with a validity period of 5 years in 2022 can be attributed to 46 CFR 67.163, Renewal of endorsement, paragraph (a), which states the COD validity period for recreational vessels to be 5 years: ''Endorsements on Certificates of Documentation are valid for 1 year, except for Recreational Endorsements on Certificates of Documentation, which are valid for 5 years.''

The Coast Guard was mandated by the 2018 Act to implement a 5-year COD for recreational vessel owners, followed by a 3-year, multi-year COD phase-in period. The 2022 Act mandated that the Coast Guard continue to offer the multi-year COD. Therefore, our estimated affected population is calculated as the difference in CODs issued to recreational vessel owners and operators in 2022 with a validity period of 5 years, and the number of CODs issued in 2021 with the same validity period, which totals 38,927 (50,807 − 11,880 = 38,927). This is the estimate of recreational vessel owners who could transition off a 5-year validity period for recreational vessel CODs once this final rule is implemented.

2022 Act Costs

The 2022 Act does not add any new cost to Government or the public. None of the requirements of the 2022 Act imposes any additional burdens. From a renewal standpoint, recreational vessel owners continue to have the choice to renew on a multi-year basis at their discretion, consistent with the 2018 Act. The Coast Guard is not amending user fees associated with CODs and is continuing with the $26 fee per validity-year for the COD as previously established.

2022 Act Cost-Savings

Although the NVDC has continued to process multi-year CODs, the NVDC has been receiving complaints from vessel owners that private companies have been sending out 5-year-only marketing notices, and that those companies could process this documentation for an additional fee. The NVDC has noted that these individuals assumed that this was their only choice, as 46 CFR part 67 has not been updated to reflect current NVDC practices. Customer have complained to the NVDC that outside companies were charging them an additional fee to process the documentation. The NVDC has noted that the average additional fee that these companies charged has been approximately $212.[7] These same customer complaints to the NVDC stated that they only used the outside companies because they were under the impression that they had no other choice. We use this estimate, multiplied by the affected population estimate above, to estimate the annual cost savings that recreational vessel owners will incur as we expect these customers to now process their documentation directly with NVDC.

Although the NVDC does not keep track of the number of COD renewals requested by third-party companies on

[7] Estimate is based in review of complaints submitted by vessel owners to the Better Business Bureau (BBB), *https://www.bbb.org/us/ca/chino-hills/profile/ship-register/us-vessel-documentation-inc-1066-850028757/complaints*, and information provided by SME and the NVDC.

behalf of individual vessel owners, based on extensive discussions with SMEs, the Coast Guard believes that the vast majority of the estimated affected population who renewed CODs with a 5-year validity period in 2022 did so primarily through the use of third-party firms, who, in turn, directed customers to the CFR.

As shown in table 5, the economic impact of the 2022 Act is an estimated annual cost-savings of approximately $8.3 million annually in 2022 U.S. dollars, discounted at 7-percent. This estimate is derived from an estimated affected population of 38,927 recreational vessels (of at least 5 net tons) owners, multiplied by the $212 fee.

TABLE 5—10-YEARS UNDISCOUNTED AND DISCOUNTED COST-SAVINGS TO THE PUBLIC

Year	Undiscounted cost-savings	7% Discount	3% Discount
2022	$8,252,524	$7,712,639	$8,012,159
2023	8,252,524	7,208,074	7,778,795
2024	8,252,524	6,736,518	7,552,229
2025	8,252,524	6,295,811	7,332,261
2026	8,252,524	5,883,936	7,118,700
2027	8,252,524	5,499,005	6,911,359
2028	8,252,524	5,139,257	6,710,057
2029	8,252,524	4,803,044	6,514,619
2030	8,252,524	4,488,826	6,324,872
2031	8,252,524	4,195,165	6,140,653
Total	82,525,240	57,962,275	70,395,704
Annualized		8,252,524	8,252,524

* Totals may not sum due to rounding.

2022 Act Benefits

The 2022 Act preserves consumer choice in selecting a COD-validity timeframe, allowing vessel owners to maximize their welfare based on their own individualized choice matrix. Finally, confusion regarding the validity period for a recreational vessel COD will be eliminated, as the CFR will accurately reflect the law and NVDC policy.

Alternatives

As stated in the Summary and regulatory text, the 2022 Act is a legislatively mandated and self-executing law promulgated by Congress. Hence, the Coast Guard does not have any discretionary action upon its enactment. The Coast Guard is promulgating this final rule to ensure that CFR regulations concur and comply with the 2022 Act. Therefore, no alternatives were considered for this rulemaking.

B. Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, requires federal agencies to consider the potential impact on small entities when they issue a rule after being required to first publish a general notice of proposed rulemaking. Under 5 U.S.C. 604(a), a regulatory flexibility analysis is not required for this final rule under provision in 5 U.S.C. 553(b)(B), because Section 3511 of the 2022 Act provides the Coast Guard no discretion in adopting the specific timeframes for renewal of recreational vessel CODs. We are not required to publish a general notice of a proposed rulemaking; therefore, we did not conduct a regulatory flexibility analysis for this rule.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this rule. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This rule calls for no new or revised collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. The OMB Control Number for the Coast Guard's Vessel Documentation collection is 1625–0027. As this final rule codifies current COD options for recreational vessel owners, and we expect no change in the average number of annual submissions, there is no change to the OMB-approved collection.

E. Federalism

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis follows.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. *See United States* v. *Locke,* 529 U.S. 89 (2000) (finding that the states are foreclosed from regulating tank vessels); *see also Ray* v. *Atlantic Richfield Co.,* 435 U.S. 151, 157 (1978) (State regulation is preempted where ''the scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it [or where] the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject'' (citations omitted)). This rule implements changes made by Congress to the comprehensive federal vessel documentation requirements of 46 U.S.C. Ch. 121, over which Congress clearly has granted the Coast Guard, via delegation from the Secretary, exclusive authority. Therefore, because the States may not regulate within these categories, this rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations.

F. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Although this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards and Incorporation by Reference

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have decided that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

This rule meets the criteria for categorical exclusion L54 and L57 in Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. Categorical exclusion L54 pertains to regulations that are editorial or procedural. Categorical exclusion L57 pertains to regulations concerning documentation of vessels. This rule involves allowing recreational vessel owners to select a recreational vessel endorsement on a Certificate of Documentation (COD) with a validity of 1, 2, 3, 4, or 5 years. This rule is not part of a larger action, and it will not result in significant impacts to the human environment. The purpose of this final rule is to meet the Congressional mandate contained in Section 3511 of the National Defense Authorization Act of 2022.

List of Subjects in 46 CFR Part 67

Reporting and recordkeeping requirements, Vessels.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 67 as follows:

PART 67—DOCUMENTATION OF VESSELS

■ 1. The authority citation for part 67 is revised to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2104, 2107, 12102, 12103, 12104, 12105, 12106, 12113, 12133, 12139; DHS Delegation 00170.1, Revision No. 01.3.

■ 2. Amend § 67.163 by:

■ a. In paragraph (a) introductory text, revising the first sentence.

■ b. In paragraph (b), removing the text ''an original'' and adding, in its place, the text ''a''; and

■ c. Revising paragraph (c).

The revisions reads as follows:

§ 67.163 Renewal of endorsement.

(a) * * * Endorsements on Certificates of Documentation are valid for 1 year, except for Recreational Endorsements on Certificates of Documentation, which are valid for 1, 2, 3, 4, or 5 years. * * *

* * * * *

(c) *Requirement for renewal of recreational endorsements.* A Certificate of Documentation for a recreational vessel and the renewal of such a certificate will be effective for 1, 2, 3, 4, or 5 years for such a Certificate of Documentation for such vessel or the renewal thereof.

§ 67.317 [Amended]

■ 3. In § 67.317, amend paragraph (a) by removing the text ''must be renewed every'' and add, in its place, the text ''can be renewed for a period of 1, 2, 3, 4, or''.

■ 4. Amend § 67.550 by revising Revise Table 1 to read as follows:

§ 67.550 Fee table.

* * * * *

TABLE 1 TO § 67.550—FEES

Activity	Fee
Commercial Applications:	
COM Initial Certificate of Documentation (COD) (1 Year Only)	$133.00
COM Exchange of Certificate of Documentation (COD) (1 Year Only)	84.00
COM Return of Vessel to Documentation (1 Year Only)	84.00
COM Replacement of Lost or Mutilated COD	50.00
COM Approval of Exchange of COD requiring Mortgagee consent	24.00
COM Trade Endorsements:	([1])
COM Coastwise Endorsement	29.00
COM Coastwise Bowaters Endorsement	29.00
COM Fishery Endorsement	12.00
COM Registry Endorsement	None
COM Recreational Endorsement	None
COM Evidence of Deletion from Documentation	15.00
COM Renewal of Certificate of Documentation (COD) (1-Year Only)	26.00
COM Late Renewal	[2] 5.00
Recreational Applications:	
REC Initial Certificate of Documentation (COD) (1-Year)	[3] 133.00
REC Exchange of Certificate of Documentation (COD) (1-Year)	[3] 84.00
REC Return of Vessel to Documentation (COD) (1-Year)	[3] 84.00
REC Replacement of Lost or Mutilated COD	50.00
REC Approval of Exchange of COD requiring Mortgagee consent	24.00
REC Evidence of Deletion from Documentation	15.00
REC Renewal of Certificate of Documentation (1-Year)	26.00
2-Year Expiration	52.00
3-Year Expiration	78.00
4-Year Expiration	104.00
5-Year Expiration	130.00
REC Late Renewal	[2] 5.00
Waivers:	
Original Build Evidence	15.00
Bill of Sale Eligible for Filing and Recording	15.00
Miscellaneous Applications:	
Wrecked Vessel Determination	555.00
New Vessel Determination	166.00
Rebuild Determination—Preliminary or Final	450.00
Filing and Recording:	
Bill of Sale and Instruments in Nature of Bill of Sale	[4] 8.00
Mortgages and Related Instruments	[4] 4.00
Notice of Claim of Lien and Related Instruments	[4] 8.00
Certificate of Compliance:	
Certificate of Compliance (46 CFR Part 68)	55.00
Miscellaneous:	
Abstract of Title (CG–1332)	25.00
Certificate of Ownership (CG–1330)	125.00
Attachment for each vessel with same data	10.00
Certified Copy of Recorded Instrument	4.00
Certified Copy of Certificate of Documentation	4.00
Copy of instrument or document	([5])

[1] When multiple trade endorsements are requested on the same application, only the single highest applicable fee will be charged, resulting in a maximum endorsement fee of $29.00. This does not apply to recreational endorsements.
[2] Late renewal fee is in addition to the cost of the endorsement sought.
[3] 2–5 Year Expiration (Additional Fee Required—$26.00/year).
[4] Per page.
[5] Fees will be calculated in accordance with 6 CFR part 5, subpart A.

Dated: November 6, 2023.

W.R. Arguin,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2023–25024 Filed 11–13–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220919–0193; RTID 0648–XD473]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; Quota Transfer and Adjustment (General Category December Subquota)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; quota transfer and adjustment.

SUMMARY: NMFS is adjusting the Atlantic bluefin tuna (BFT) General category December 2023 subquota by transferring quota from the Reserve category. This adjustment results in an adjusted December time period subquota of 48.7 mt and an adjusted Reserve category quota of 1 mt. This action accounts for the accrued overharvest from previous 2023 General category time period subquotas, and will further opportunities for General category fishermen to participate in the December General category fishery, based on consideration of the regulatory determination criteria regarding inseason adjustments. This action would affect Atlantic Tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: The quota transfer and adjustment is effective December 1, 2023, through December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Erianna Hammond, *erianna.hammond@noaa.gov,* 301–427–8503; or Larry Redd, Jr., *larry.redd@noaa.gov,* 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

As described in § 635.27(a), the current baseline U.S. BFT quota is 1,316.14 metric tons (mt) (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). The baseline quotas for the General and Reserve categories are 710.7 mt and 38.2 mt, respectively. The General category baseline quota is suballocated to different time periods. Relevant to this action, the baseline subquota for the December time period is 37 mt. Effective January 1, 2023, NMFS transferred 20.5 mt of BFT quota from the December 2023 time period to the January through March 2023 time period resulting in an adjusted subquota of 16.5 mt (37 mt − 20.5 mt = 16.5 mt) for the December 2023 time period (88 FR 786, January 5, 2023).

To date, NMFS has published several actions that adjusted the Reserve category quota (88 FR 48136, July 26, 2023; 88 FR 64385, September 19, 2023; 88 FR 64831, September 20, 2023; 88 FR 67654, October 2, 2023). As a result of these previous actions, the current adjusted Reserve category quota prior to this action is 87.2 mt.

Based on preliminary landings data received to date, NMFS has determined that the General category landed 795 mt. This amount exceeded the cumulative adjusted quota available through November 30 (741 mt) by 54 mt (795 mt − 741 mt = 54 mt).

Quota Transfer and Adjustment

Under § 635.27(a)(1)(ii) NMFS has the authority to adjust each period's apportionment based on overharvest or underharvest in the prior period, after considering determination criteria provided under § 635.27(a)(7). Additionally, under § 635.27(a)(8), NMFS has the authority to transfer quota among fishing categories or subcategories after considering the determination criteria provided under § 635.27(a)(7). This section focuses on the calculations involved in transferring quota from the Reserve category to the General category and adjusting the quota available for the General category December subquota time period; the consideration of the determination criteria can be found below after this section.

As stated above, the adjusted Reserve category quota is 87.2 mt. The quota in the Reserve category is held in reserve for inseason or annual adjustments and research. Under § 635.24(a)(8), NMFS may allocate any portion of the Reserve category quota for inseason or annual adjustments to any fishing category quota.

Transferring 86.2 mt from the Reserve category to the General category would account for the 54 mt accrued overharvest from the January through November time periods, results in a total adjusted December time period subquota of 48.7 mt (16.5 mt + 32.2 mt = 48.7 mt), and leaves 1 mt in the Reserve category to account for any BFT mortalities associated with research. The General category quota is available for use by Atlantic Tunas General category (commercial) permitted vessels and HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

In summary, these modifications result in a total adjusted General category December time period subquota of 48.7 mt and a Reserve category quota of 1 mt. This action accounts for the accrued overharvest from previous 2023 General category time period subquotas, and will further opportunities for General category fishermen to participate in the December General category fishery, based on consideration of the regulatory determination criteria regarding inseason adjustments (see below). These quotas will be in effect when the fishery automatically opens on December 1, 2023.

Consideration of the Relevant Determination Criteria

NMFS has considered all of the relevant determination criteria and their applicability to this inseason action. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(7)(i)), biological samples collected from BFT landed by General category fishermen and provided by tuna dealers provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the General category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date (including during the summer/fall and winter fisheries in the last several years) and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(7)(ii) and (ix)). As stated above, preliminary landings data to date, indicate that the General category landed 795 mt. This amount exceeded the cumulative adjusted quota available through November 30 by 54 mt. While the General category is currently closed and December time period has not yet opened or been exceeded, without a quota transfer and adjustment at this time, based on recent catch rates in comparison to the current available quota (16.5 mt), NMFS would likely need to close the General category fishery shortly after the December time period opens. Once the fishery is closed, participants would have to stop BFT fishing activities while commercial-sized BFT remain available in the areas where General category permitted vessels operate. A quota transfer and adjustment at this time provides limited additional opportunities to harvest the U.S. BFT quota while avoiding exceeding it.

Regarding the projected ability of the vessels fishing under the General category quota to harvest the additional amount of BFT quota before the end of the fishing year (§ 635.27(a)(7)(iii)), NMFS considered General category landings over the last several years and landings to date this year. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors, such as the restrictions that some dealers placed on their purchases of BFT from General category participants this year. Thus, this quota transfer and adjustment would allow fishermen to take advantage of the availability of BFT on the fishing grounds and provide a reasonable opportunity to harvest available U.S. BFT quota.

NMFS also considered the estimated amounts by which quotas for other gear categories of the BFT fishery might be exceeded (§ 635.27(a)(7)(iv)) and the ability to account for all 2023 landings and dead discards. In most of the several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS recently took such an action to carryover the allowable 106.5 mt of underharvest from 2022 to 2023 (88 FR 64831, September 20, 2023). NMFS anticipates having sufficient quota to account for landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the adjustment on accomplishing the objectives of the FMP (§ 635.27(a)(7)(v) and (vi)). This quota transfer and adjustment would be with established quotas and subquotas, which are implemented consistent with ICCAT Recommendation 22–10, ATCA, and the objectives of the 2006 Consolidated HMS FMP and amendments. In establishing these quotas and subquotas and associated management measures, ICCAT and NMFS considered the best scientific information available, objectives for stock management and status, and effects on the stock. This quota transfer and adjustment is in line with the established management measures and stock status determinations. Another principal consideration is the objective of providing opportunities to harvest the available General category quota without exceeding the annual quota, based on the objectives of the 2006 Consolidated HMS FMP and its amendments, including to achieve optimum yield on a continuing basis and to allow all permit categories a reasonable opportunity to harvest available BFT quota allocations (related to § 635.27(a)(7)(x)). Specific to the General category, this includes providing opportunities equitably across all time periods.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustments, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report their own catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing *https://www.hmspermits.noaa.gov* or by using the HMS Catch Reporting app, or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281–9260, or access *https://hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635 and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that pursuant to 5 U.S.C. 533(b)(B), there is good cause to waive prior notice and opportunity to provide comment on this action, as notice and comment would be impracticable and contrary to this action for the following reasons. Specifically, the regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Providing prior notice and opportunity for public comment on this quota transfer and adjustment of the General category is impracticable and contrary to the public interest as the General category fishery will open on December 1 for the December time period. Based on General category catch rates, a delay in this action would likely result in BFT landings exceeding the adjusted December 2023 General category quota shortly after the opening on December 1. Subquota exceedance may result in the need to reduce quota for the General category later in the year and thus could affect later fishing opportunities. NMFS could not have proposed this action earlier, as it needed to consider and respond to updated landings data, in deciding to add the underharvest from the October through November time period and transfer a portion of the Reserve category quota to the General category, specifically the December time period subquota. This action does not raise conservation and management concerns. Transferring quota from the Reserve category to the General category does not affect the overall U.S. BFT quota, and available data show the adjustment would have a minimal risk of exceeding the ICCAT-allocated quota. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria.

For all of the above reasons, the AA finds that pursuant to 5 U.S.C. 553(d), there is good cause to waive the 30-day delay in effective date.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: November 7, 2023.

Kelly Denit,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–24923 Filed 11–13–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 88, No. 218

Tuesday, November 14, 2023

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303 and 308

RIN 3064–AF92

Fair Hiring in Banking Act

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) proposes to revise its regulations to conform with the Fair Hiring in Banking Act (FHBA)—which was enacted on and immediately effective as of December 23, 2022. Among other provisions, the FHBA excluded or exempted categories of otherwise-covered offenses from the scope of statutory prohibitions on participation in banking. These categories pertain to certain older offenses, offenses committed by individuals 21 or younger, and ''certain lesser offenses.'' The FHBA also clarified several definitions in section 19 and provided application-processing procedures. The FDIC considers most of the proposed revisions to its regulations to be required by the FHBA. Other proposed revisions reflect the FDIC's interpretation of statutory prohibitions in light of the FHBA.

DATES: Comments must be received on or before January 16, 2024.

ADDRESSES: You may submit comments, identified by RIN 3064–AF92, by any of the following methods:

- *FDIC Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.* Follow instructions for submitting comments on the agency website.
- *Email: comments@fdic.gov.* Include RIN 3064–AF92 on the subject line of the message.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments RIN 3064–AF92, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery to FDIC:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7 a.m. and 5 p.m.

Please include your name, affiliation, address, email address, and telephone number(s) in your comment. All statements received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure.

- *Public Inspection:* Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/.* Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this document will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Timothy Schuett, Senior Review Examiner, 763–614–9473, *tschuett@fdic.gov;* Brian Zeller, Review Examiner, 571–345–8170, *bzeller@fdic.gov,* Division of Risk Management Supervision; or Graham Rehrig, Counsel, 703–314–3401, *grehrig@fdic.gov,* Legal Division.

SUPPLEMENTARY INFORMATION:

I. Background

Section 19 of the Federal Deposit Insurance Act (section 19) [1] prohibits, without the prior written consent of the FDIC (the FDIC refers to applications for such consent as ''consent applications''), the participation in banking by any person who has been convicted of a crime involving dishonesty or breach of trust or money laundering or who has agreed to enter into a pretrial diversion or similar program in connection with the prosecution for such an offense (collectively, covered offenses). Further, this law forbids an insured depository institution (IDI) from permitting such a person to engage in any conduct or to continue any relationship prohibited by section 19. Section 19 also imposes a separate ten-year ban for a person convicted of certain crimes enumerated in Title 18 of the United States Code, which can be removed only upon a motion by the FDIC and approval by the sentencing court.

From 1998 until 2020, the FDIC had a Statement of Policy that was issued related to section 19, occasionally revised, and published in the **Federal Register**.[2] The purpose of the Statement of Policy, as amended through the years, was ''to provide the public with guidance relating to section 19 and the FDIC's application thereof.'' [3] In 2020, following notice and comment, the FDIC revised and codified the Statement of Policy into the FDIC's Filing Procedures under 12 CFR part 303, subpart L, and Rules of Practice and Procedure under part 308, subpart M (2020 Final Rule).[4]

On December 23, 2022, the President signed into law the Fair Hiring in Banking Act FHBA,[5] which significantly revised section 19 and was effective immediately. The FHBA created several categories of exceptions or exemptions to the prohibition on participating in banking, including the following:

- *Certain older offenses:* (1) if it has been 7 years or more since the offense occurred; (2) if the individual was incarcerated with respect to the offense and it has been 5 years or more since the individual was released from incarceration; or (3) for individuals who committed an offense when they were 21 years of age or younger, if it has been

[1] 12 U.S.C. 1829.

[2] *See* 63 FR 66177 (Dec. 1, 1998); 72 FR 73823 (Dec. 8, 2007) with correction issued at 73 FR 5270 (Oct. 13, 2008); 76 FR 28031 (May 13, 2011); 77 FR 74847 (Dec. 18, 2012); 83 FR 38143 (Aug. 3, 2018).

[3] *See* 84 FR 68353.

[4] *See* 85 FR 51312 (Aug. 20, 2020).

[5] The FHBA appears at section 5705 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Public Law 117–263, 136 Stat. 2395, 3411.

more than 30 months since the sentencing occurred.[6]

- *Offenses for which an order of expungement, sealing, or dismissal has been issued* in regard to the conviction in connection with such offense and it is intended by the language in the order itself, or in the legislative provisions under which the order was issued, that the conviction shall be destroyed or sealed from the individual's State, Tribal, or Federal record even if exceptions allow the record to be considered for certain character and fitness evaluation purposes.
- ''*Designated lesser offenses,*'' including the use of fake identification, shoplifting, trespass, fare evasion, driving with an expired license or tag (and such other low-risk offenses as the FDIC may designate), if 1 year or more has passed since the applicable conviction or program entry.
- *Misdemeanor criminal offenses involving dishonesty,* if the offense was committed more than one year before the date on which an individual files a consent application,[7] excluding any period of incarceration.
- *A criminal offense involving dishonesty that also* ''*involv[es] the possession of controlled substances.*''

The FHBA clarifies several terms in section 19, including ''criminal offense involving dishonesty'' and ''pretrial diversion or similar program.'' It also provides conditions regarding *de minimis* offenses, to the extent the FDIC provides *de minimis* exemptions by rule.

The FHBA codifies procedures for consent applications filed with the FDIC. It requires the FDIC to make all forms and instructions related to consent applications available to the public, including on the FDIC's website. It requires the FDIC to primarily rely on the criminal history record of the Federal Bureau of Investigation when evaluating consent applications and to provide such records to the applicant to review for accuracy. Further, it requires the FDIC to assess evidence of an individual's rehabilitation including: the applicant's age at the time of the conviction or program entry; the time that has elapsed since conviction or program entry; and the relationship of an individual's offense to the responsibilities of the applicable position. Other information, including an individual's employment history, letters of recommendation, certificates documenting participation in substance abuse programs, successful participation in job preparation and educational programs, other relevant evidence, and any additional information the FDIC determines necessary for safety and soundness shall also be considered.

II. Discussion of Proposed Amendments

The proposed amendments to the FDIC's section 19 regulations are primarily intended to align the regulations with the FHBA's provisions. The proposed amendments address, among other topics, the types of offenses covered by section 19, the effect of the completion of sentencing or pretrial-diversion program requirements in the context of section 19, and the FDIC's procedures for reviewing applications filed under section 19. Furthermore, in developing these proposed amendments, the FDIC has consulted and coordinated with the National Credit Union Administration, the Board of Governors of the Federal Reserve System (FRB), and the Office of the Comptroller of the Currency ''to promote consistent implementation [of the FHBA] where appropriate.'' [8]

Significant proposed revisions [9] include the following:

A. Revised Provisions of 12 CFR Part 303, Subpart L

1. Section 303.220 What is section 19 of the Federal Deposit Insurance Act?

The FDIC proposes revising paragraph (b) of this section to clarify that IDIs must make a reasonable, documented inquiry to verify an applicant's history to ensure that a person who has a covered offense on the person's record is not hired or permitted to participate in its affairs without the written consent of the FDIC.

2. Section 303.221 Who is covered by section 19?

The FDIC proposes to revise paragraph (d) of this section to more closely align its restrictions with the analogous FRB regulations under 12 CFR 225.41 and 238.31 and the FDIC's regulations under 12 CFR part 303, subpart E, concerning Change in Bank Control applications. A person will be deemed to exercise ''control'' if that person: (1) has the ability to direct the management or policies of an IDI; (2) has the power to vote 25 percent or more of the voting shares of an IDI; or (3) has the power to vote 10 percent of the voting shares of an IDI if: (a) no other person owns, controls, or has the power to vote more shares; or (b) the institution has registered securities under section 12 of the Securities Exchange Act of 1934.[10] Under the same standards, a person will be deemed to ''own'' an IDI if that person owns: (1) 25 percent or more of the institution's voting stock; or (2) 10 percent of the voting shares if: (a) no other person owns more; or (b) the institution has registered securities under section 12 of the Securities Exchange Act of 1934. Paragraph (d) retains language concerning individuals acting in concert with others so as to have such ownership or control.

3. Section 303.222 Which offenses qualify as ''Covered Offenses'' under section 19?

The proposed revisions to paragraph (a) of this section would reflect the new statutory definition of ''criminal offense involving dishonesty.'' [11] The FHBA excludes from the scope of such offenses ''an offense involving the possession of controlled substances.'' [12] The FDIC interprets this phrase concerning controlled substances to exclude, at a minimum, criminal offenses involving the simple possession of controlled substances and possession with intent to distribute a controlled substance. This exclusion may also apply to other drug-related offenses depending on the statutory elements of the offenses or from court determinations that the statutory provisions of the offenses do not involve dishonesty, breach of trust, or money laundering. Potential applicants may contact their appropriate FDIC Regional Office if they have questions about whether their offenses are covered under section 19.

This revised regulatory language would mark a shift from the FDIC's current section 19 regulations, which require an application for all convictions and pretrial diversions concerning the illegal manufacture, sale, distribution of, or trafficking in controlled substances. The FDIC believes that this proposed revision would be consistent with the text and purposes of the FHBA, would align the FDIC's interpretation of section 19 as to offenses involving controlled substances

[6] These exceptions do not apply to the offenses described under 12 U.S.C. 1829(a)(2).

[7] Under the FHBA, a ''consent application'' ''means an application filed with [the FDIC] by an individual (or by an insured depository institution or depository institution holding company on behalf of an individual) seeking the written consent of the [FDIC] under [12 U.S.C. 1829(a)(1)].'' 12 U.S.C. 1829(g)(1).

[8] *See* 12 U.S.C. 1829(f)(9) (''In carrying out this section, the [FDIC] shall consult and coordinate with the National Credit Union Administration as needed to promote consistent implementation where appropriate'').

[9] The proposed rule would also make a number of non-substantive, technical edits to the section 19 regulations that are not discussed in this section.

[10] 15 U.S.C. 78l.

[11] *See* 12 U.S.C. 1829(g)(2).

[12] 12 U.S.C. 1829(g)(2)(C)(ii).

more closely with other Federal banking regulators, and continue to recognize that a drug-related offense could potentially involve dishonesty, breach of trust, or money laundering. The FDIC also notes that this proposed revision to its section 19 regulations would *not* affect the FDIC's ability to consider drug-related offenses, as they pertain to the suitability of an individual, under other statutory provisions, including the Change in Bank Control Act and section 32 of the FDI Act.

The FHBA also states that the term ''criminal offense involving dishonesty'' does not include ''a misdemeanor criminal offense committed more than one year before the date on which an individual files a consent application, excluding any period of incarceration.'' [13] The FDIC interprets the term ''offense committed'' to mean the ''last date of the underlying misconduct,'' based on the plain text of the statute. In instances with multiple offenses, ''offense committed'' means the last date of any of the underlying offenses.

Revised paragraph (c) would include new language reflecting the statute's exception of certain older offenses from the scope of section 19.[14] Among other exceptions, the FHBA states that section 19's restrictions will not apply to an offense if ''it has been 7 years or more since the offense occurred.'' [15] The FDIC considers the phrases ''offense committed''—noted above—and ''offense occurred'' to be substantially similar. Accordingly, the FDIC interprets the term ''offense occurred'' to mean the ''last date of the underlying misconduct.'' In instances with multiple offenses, ''offense occurred'' means the last date of any of the underlying offenses. Revised paragraph (c) contains another FHBA exception: section 19's restrictions would not apply to an offense if ''the individual was incarcerated with respect to the offense and it has been 5 years or more since the individual was released from incarceration.'' [16] While the language of the statute is clear, the FDIC notes that there could be situations in which an individual who was incarcerated with respect to an offense would be permitted to work at a bank before a similarly situated individual who was not incarcerated in connection with an offense. Revised paragraph (c) also tracks the FHBA's language concerning offenses committed by individuals 21 years of age or younger. The FHBA states that, for individuals who committed an offense when the individual was 21 years of age or younger, section 19 shall not apply to the offense if it has been more than 30 months since the sentencing occurred.[17] The FDIC interprets ''sentencing occurred'' to mean the date on which a court imposed the sentence, not the date on which all conditions of sentencing were completed. Moreover, revised paragraph (c) notes that its exclusions—which are derived from the FHBA—do not apply to the enumerated offenses described under 12 U.S.C. 1829(a)(2).[18]

Revised paragraph (d) excludes ''designated lesser offenses'' (for example, using fake identification), as specified in 12 U.S.C. 1829(c)(3)(D), if one year or more has passed since the applicable conviction or program entry.

Revised paragraph (e) adds language to codify the FDIC's long-held position that individuals who are convicted of or enter into a pretrial diversion program for a criminal offense involving dishonesty, breach of trust, or money laundering in foreign jurisdictions are subject to section 19, unless the offense is otherwise excluded by 12 CFR part 303, subpart L. For example, if an IDI has operations outside the United States, the IDI could conduct a reasonable, documented inquiry to verify an applicant's history, in accordance with 12 CFR 303.220, by inquiring about potential covered offenses that may have occurred in that foreign country (or countries) in which the IDI conducts operations, as well as in the United States. As another example of such an inquiry, if an IDI plans to hire someone in the United States who is from a foreign country, the IDI could inquire about potential covered offenses that may have occurred in the United States and in that foreign country.

4. Section 303.223 What constitutes a conviction under section 19?

Paragraph (c) of this section has been revised to reflect statutory language related to the treatment of orders of expungement, sealing, or dismissal of criminal records.[19] The FHBA provides a two-pronged test to determine whether a covered offense should be considered expunged, dismissed, or sealed and therefore excluded from the scope of section 19. First, there must be an ''order of expungement, sealing, or dismissal that has been issued in regard to the conviction in connection with such offense''; second, it must be ''intended by the language in the order itself, or in the legislative provisions under which the order was issued, that the conviction shall be destroyed or sealed from the individual's State, Tribal, or Federal record, even if exceptions allow the record to be considered for certain character and fitness evaluation purposes.'' [20] The statute does not address expungements, sealings, or dismissals by operation of law, and the FDIC has sought to harmonize its current regulations concerning expunged and sealed records with the statutory language to provide a more comprehensive framework as to such records. The FDIC has also added language to the second (intent) prong of the expungement framework to encompass the language in the expungement order itself, the legislative provisions under which the order was issued, *and other legislative provisions.* This proposed revision also seeks to harmonize the FDIC's current regulations concerning expungements with the FHBA's provisions. The FDIC believes that all of the additional language is consistent with the purposes of the statute.

Revised paragraph (d) clarifies that it encompasses the terms ''youthful offender'' and ''juvenile delinquent'' *and similar terms,* since a court does not have to specifically use these terms in an adjudication in order for paragraph (d)'s provisions to apply.

5. Section 303.224 What constitutes a pretrial diversion or similar program (program entry) under section 19?

This section has been revised to reflect the statutory definition of ''pretrial diversion or similar program.'' [21]

6. Section 303.225 What are the types of applications that can be filed?

This section has been revised to reflect the updated statutory filing procedures. The statute removes the FDIC's former policy that an institution sponsor a consent application or that an individual seek a waiver of the institution filing requirement. Moreover, the statute enables a depository institution holding company to file an application on behalf of an individual (previously, only IDIs could file such sponsored applications).[22] In order to avoid duplication of applications filed with the FRB and the FDIC, revised paragraph (a) states that the FDIC will accept applications from: an individual; an IDI applying on behalf of an

[13] 12 U.S.C. 1829(g)(2)(C)(i).

[14] *See* 12 U.S.C. 1829(c)(1).

[15] *See* 12 U.S.C. 1829(c)(1)(A)(i).

[16] *See* 12 U.S.C. 1829(c)(1)(A)(ii).

[17] 12 U.S.C. 1829(c)(1)(B).

[18] *See* 12 U.S.C. 1829(c)(1)(C).

[19] *See* 12 U.S.C. 1829(c)(2).

[20] 12 U.S.C. 1829(c)(2).

[21] *See* 12 U.S.C. 1829(g)(3).

[22] *See* 12 U.S.C. 1829(f)(1).

individual; a depository institution holding company applying on behalf of an individual with respect to a depository institution subsidiary of the holding company; and a depository institution holding company applying on behalf of an individual who will work at the holding company but also participate in the affairs of the IDI or who would be in a position to influence or control the management or affairs of the IDI, in accordance with 12 CFR 303.221(a).

Revised paragraph (b), consistent with the FHBA, states that an individual or an institution may file applications at separate times. Under either approach, the application(s) must be filed with the appropriate FDIC Regional Office.[23]

7. Section 303.226 When may an application be filed?

This revised section notes that, before an application may be filed, ''all of the sentencing requirements associated with a conviction, or conditions imposed by the program entry, including but not limited to, imprisonment, fines, condition of rehabilitation, and probation requirements, must be completed, and the case must be considered final by the procedures of the applicable jurisdiction.'' The FDIC proposes to include this revised language to accord with several of the FHBA's exclusions from section 19 that are not tied to the completion of sentencing requirements.

Furthermore, the FHBA requires the FDIC to ''make all forms and instructions related to consent applications available to the public, including on the website of the Corporation.'' [24] These forms and instructions ''shall provide a sample cover letter and a comprehensive list of items that may accompany the application, including clear guidance on evidence that may support a finding of rehabilitation.'' [25] While the FDIC has not explicitly mentioned these requirements in its regulations, the agency will comply with them.

8. Section 303.227 De minimis Offenses

The FDIC proposes to retitle this section to avoid confusion between ''designated lesser offenses'' and ''*de minimis* offenses.'' This section's current title is, ''When is an application not required for a covered offense or program entry (*De minimis* offenses)?'' The FHBA includes ''designated lesser offenses,'' which offenses are excluded from the scope of section 19 (that is, they are not considered *de minimis* offenses—which offenses are considered covered offenses for which no application is required because the application is deemed automatically granted). The FDIC believes that the current title would cause confusion for a reader and therefore proposes retitling this section.

The FHBA removed the use of fake identification from the scope of section 19, and revised paragraphs (a)(1) and (b)(4) reflect this exclusion.[26] Revised paragraph (a)(2) would reflect the FHBA's confinement criteria as to the FDIC's determination of *de minimis* offenses.[27]

The FDIC proposes to revise the *de minimis* requirement related to the aggregate total face value of all ''bad'' or insufficient funds checks in paragraph (b)(2)(i) from $1,000 to $2,000 to conform with the statute.[28]

9. Section 303.228 How To File an Application

This revised section would eliminate the institution filing requirement and waiver process and indicate that an ''institution''—an IDI or a depository institution holding company—could file an application on behalf of an individual, rather than just an IDI. Both of these proposed revisions are due to the updated statutory language.[29] This revised section would also clarify that the appropriate FDIC Regional Office for an institution-sponsored application would be the office covering the state where the institution's home office is located and that the appropriate FDIC Regional Office for an individual application would be the office covering the state where the person resides.

10. Section 303.229 How an Application Is Evaluated

Revised paragraph (a) would reflect new statutory requirements related to the FDIC's review process, including the requirement that the FDIC primarily rely on the criminal history record of the Federal Bureau of Investigation in the FDIC's review and provide such record to the applicant to review for accuracy.[30] The FDIC interprets the term ''criminal history record'' to mean ''identity history summary checks,'' which are commonly known as ''rap sheets.'' Under revised paragraph (a)—and in accordance with the FHBA—the FDIC, in reviewing a consent application, would provide a copy of the rap sheet to an applicant to review for accuracy.[31]

Revised paragraph (b) would state that the FDIC will not require an applicant to provide certified copies of criminal history records unless the FDIC determines that there is a clear and compelling justification to require additional information to verify the accuracy of the criminal history record of the Federal Bureau of Investigation (that is, the rap sheet).[32]

Revised paragraph (d) would clarify how the FDIC will evaluate evidence of rehabilitation and other evidence, as required by the FHBA.[33]

Revised paragraph (g) would eliminate references to the former application-waiver requirement.

Finally, revised paragraph (h) would incorporate statutory language explaining when a new institution-sponsored application would be necessary due to changes in the scope of an applicant's employment.[34]

11. Section 303.231 Waiting Time for a Subsequent Application if An Application Is Denied

This section, as currently written and among other provisions, requires a one-year waiting period to file a consent application, following the issuance of a decision denying such an application. The proposed rule would retain the existing regulatory text as paragraph (a) and create a new paragraph (b)—which would note that an institution-sponsored application is not subject to the one-year waiting period if the application (1) follows the denial of an individual application, or (2) follows the denial of an institution-sponsored application and the subsequent application is sponsored by a different institution or is for a different position.

B. Revised Provisions of 12 CFR Part 308, Subpart M

The proposed rule would make several technical amendments to §§ 308.156 and 308.158 to encompass applications that are sponsored by depository institution holding companies, clarify two sentences concerning hearing procedures, and use more consistent terminology.

[23] *See* 12 U.S.C. 1829(f)(1).

[24] 12 U.S.C. 1829(f)(5)(A).

[25] 12 U.S.C. 1829(f)(5)(B).

[26] See 12 U.S.C. 1829(c)(3)(D).

[27] *See* 12 U.S.C. 1829(c)(3)(B).

[28] *See* 12 U.S.C. 1829(c)(3)(C).

[29] *See* 12 U.S.C. 1829(f)(1).

[30] *See* 12 U.S.C. 1829(f)(6)(A)(i).

[31] *See* 12 U.S.C. 1829(f)(6)(A)(ii).

[32] 12 U.S.C. 1829(f)(6)(B).

[33] 12 U.S.C. 1829(f)(7). While the statute uses the terms ''rehabilitation'' and ''mitigating'' as separate categories of evidence, the terms appear to be substantially similar, in the context of section 19 applications, and the use of both terms in these regulations may create confusion. Therefore, the proposed rule uses the term rehabilitation not mitigating.

[34] *See* 12 U.S.C. 1829(f)(8).

III. Expected Effects

As previously discussed, the proposed rule would align the FDIC's regulations with the FHBA's provisions, make additional changes to further clarify the FDIC's regulations related to section 19, more closely align the FDIC's section 19 regulations with those of other Federal financial regulators, and make a number of non-substantive, technical edits. As of the quarter ending June 30, 2023, there were 4,654 FDIC-insured depository institutions, all of which are covered by the rule and therefore could be affected.[35] Additionally, the rule will apply to persons covered by the provisions of section 19, including those who are or wish to become employees, officers, directors, or controlling shareholders of an IDI or who otherwise are or wish to become an institution-affiliated party (IAP) of an IDI.

To estimate the number of institutions and individuals affected by the rule, the FDIC counted the number of section 19 applications it has received between 2020 and 2022. Over this period, the FDIC received 27 bank-sponsored section 19 applications, an average of 9 per year. Additionally, the FDIC received 202 individual section 19 applications during the same period, an average of approximately 67 per year.[36] Therefore, the FDIC estimates that the proposed rule could affect at least 9 FDIC-insured depository institutions and 67 individuals per year. Assuming that each application involves a different institution, approximately 2 percent of insured institutions, or 76, could be affected per year on average.[37]

As previously described, the proposed rule would align the FDIC's regulations with the FHBA's provisions. In particular, the FHBA created several categories of exceptions or exemptions to the prohibition on participating in banking. The proposed rule would incorporate these categories of exemptions and exceptions. The FDIC believes that the additional categories for exceptions or exemptions to the prohibition on participating in banking established by the FHBA could benefit certain individuals and IDIs by reducing the number of applications they would otherwise be required to file under section 19. Additionally, the categories of exceptions or exemptions to the prohibition on participating in banking established by the FHBA could benefit IDIs by marginally expanding the supply of labor available. However, these changes were created by the FHBA and were effective immediately upon passage, and the proposed rule aligns the FDIC's regulations with these elements of the FHBA; therefore, the associated changes in the proposed rule will have no direct effect on individuals or IDIs.

The proposed rule would amend the FDIC's existing section 19 application-procedure regulations to incorporate the FHBA's provisions. The FDIC's current section 19 regulations contain references to existing application procedures that are similar in substance to those established by FHBA. However, the FHBA, among other requirements, compels the FDIC to primarily rely on the criminal history record of the Federal Bureau of Investigation when reviewing consent applications. It is the current practice of the FDIC to consider all relevant information when evaluating a section 19 application. However, the establishment of a common source of criminal history, together with only requiring certified copies of criminal history records if there exists clear and compelling justification for doing so, could benefit certain individuals and IDIs by marginally reducing the volume of information they need to supply to the FDIC. The FDIC believes that, while these proposed changes to the application procedures will directly affect certain individuals and institutions that file section 19 applications, they may not have a substantial effect on potential applicants. Finally, these changes were created by the FHBA and were effective immediately upon passage, and the proposed rule aligns the FDIC's regulations with these elements of the FHBA; therefore, the associated changes in the proposed rule will have no direct effect on individuals or IDIs.

Finally, in seeking to align its section 19 regulations with the provisions of the FHBA, the FDIC used its discretion to marginally increase the scope of certain terms so as to better reflect the purposes of the FHBA. In particular, the FDIC has provided broader language as to the scope of expunged, sealed, or dismissed offenses. This aspect of the proposed rule could potentially benefit persons covered by the provisions of section 19, including individuals who are or wish to become employees, officers, directors, or controlling shareholders of an IDI, or who otherwise are or wish to become an IAP of an IDI. However, given that most of the proposed amendments are focused on aligning the FDIC's regulations with the FHBA, the marginal effect of this aspect of the proposed rule is likely to be small.

The FDIC invites comments on all aspects of this analysis. In particular, would the proposed rule have any costs or benefits that the FDIC has not identified?

IV. Alternatives

As discussed above, almost all of the proposed substantive changes stem from the FHBA's revisions to section 19. The FDIC does not have discretion in considering alternatives to those statutory revisions. The FDIC has, however, proposed several clarifications and interpretations to its section 19 regulations. For example, the FDIC has provided broader language as to the scope of expunged, sealed, or dismissed offenses. The FDIC considered whether to simply provide the statutory definition for such offenses. The FDIC chose to propose the inclusion of more expansive language, in the interest of harmonizing the FDIC's existing regulations with the revisions to section 19, and under the belief that this language would be consistent with the purposes of the FHBA. The FDIC invites comments on its consideration of alternatives. In particular, are there other alternatives that the FDIC should consider?

V. Request for Comments

1. The FDIC seeks comments on all aspects of its approach to section 19 and more specifically on the questions that follow.

2. *Offense date.* As revised, section 19 provides for an exception for an offense if ''it has been 7 years or more since the offense occurred.'' [38] There is a similar provision that removes from the definition of ''criminal offense involving dishonesty'' ''a misdemeanor criminal offense committed more than one year before the date on which an individual files a consent application, excluding any period of incarceration[.]'' [39] Historically, the FDIC's position has been that actions do not amount to a covered ''offense,'' for section 19 purposes, until there has been either a conviction via a guilty plea, finding of guilt, or an entry into a pretrial-diversion program. This is because culpability and responsibility for the actions do not attach until one of those events occurs.[40] However, for purposes

[35] FDIC Call Report data, March 31, 2023.

[36] FDIC Application Tracking System.

[37] (76/4,654) * 100 = 1.6 percent.

[38] 12 U.S.C. 1829(c)(1).

[39] 12 U.S.C. 1829(g)(2)(C)(i).

[40] *See* 12 CFR 303.223(a) (2020). (''There must be a conviction of record. Section 19 does not cover arrests or pending cases not brought to trial, unless the person has a program entry as set out in § 303.224.''). The FDIC's current section 19 regulations only focus on underlying misconduct in the context of *de minimis* offenses for individuals who were 21 years of age of younger when the ''actions that resulted in [the] conviction[ ] or

of evaluating whether the seven-year or one-year exception applies, the FDIC must evaluate if it has been seven years or more since the ''offense occurred'' or whether the ''offense [was] committed more than one year before the date on which an individual files a consent application, excluding any period of incarceration.'' The FDIC proposes to interpret the phrases ''offense occurred'' and ''offenses committed'' as the ''last date of the underlying misconduct'' given the text of the statute. (In instances with multiple offenses, ''offense occurred'' or ''offense committed'' would mean the last date of any of the underlying offenses.) However, the FDIC acknowledges that there may be other, supportable interpretations of this phrase. For example, the FDIC is aware of legislative history indicating that the timeframes established by the FHBA were chosen because of their relation to an individual's likelihood of rehabilitation and that an individual's rehabilitation likely only begins with conviction or program entry, rather than the date of their misconduct. As such, the FDIC seeks public comment on the following topic: Is the FDIC's interpretation of the phrases ''offense occurred'' and ''offense committed'' as the ''last date of underlying misconduct'' appropriate or are there other interpretations the FDIC should consider? What support do commenters have for other interpretations given the language of the statute?

3. ''*Sentencing occurred.*'' The FHBA exempts offenses committed by individuals 21 years of age or younger if it has been more than 30 months since the sentencing occurred.[41] However, the statute does not define the phrase ''sentencing occurred.'' The FDIC proposes to interpret ''sentencing occurred'' to mean the date on which a court imposed the sentence, not the date on which all conditions of sentencing were completed. The FDIC seeks public comment on the following topic: Is the FDIC's proposed interpretation of the phrase ''sentencing occurred'' appropriate?

4. *Foreign convictions and pretrial diversions.* Section 19 applies to ''any person who has been convicted of any criminal offense involving dishonesty or a breach of trust or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense.''[42] The phrase ''criminal offense involving dishonesty'' is defined in the statute but is silent as to whether it includes convictions and pretrial diversions for criminal offenses prosecuted by foreign authorities (foreign convictions).[43] The statute does not define ''offense involving . . . breach of trust or money laundering.'' The FDIC's position has been that foreign convictions and pretrial diversions are included within the scope of section 19. There are strong public policy rationales for prohibiting persons who have been convicted of certain foreign criminal offenses (or entered into a pre-trial diversion program in connection with such an offense) from becoming or continuing as an IAP or owning, controlling, or otherwise participating in the affairs of an insured depository institution. However, the FDIC acknowledges that there may be caselaw, statutory construction, and other arguments that support a reading of section 19 that would exclude foreign convictions and pretrial diversions from the scope of section 19. As such, the FDIC seeks public comment on the following topic: Does section 19 encompass foreign convictions and pretrial diversions? What support do commenters have for their position?

5. *Expungements, sealings, and dismissals.* The FHBA established a new statutory exemption for expunged, sealed, and dismissed convictions (collectively, ''expungements'').[44] The FDIC's current regulations contain more expansive language concerning expungements than the statutory text. Notably, the FDIC's expungement provisions encompass all convictions that had been expunged—whether by court order or otherwise by operation of law. The statutory language does not mention expungements ''by operation of law''—as opposed to through a court order. The proposed rule incorporates the new statutory language but also maintains the FDIC's broad interpretation of ''expungement'' to encompass covered offenses that have been expunged by operation of law. The FDIC seeks public comment on the following topic: Given the new statutory exemption for expunged offenses, is the FDIC's more expansive proposed interpretation of expungement—which term includes records that have been expunged by application of law—appropriate?

6. *Offenses involving controlled substances.* The FHBA states that ''offenses involving the possession of controlled substances'' are not included within the definition of ''criminal offense involving dishonesty'' and, therefore, are not subject to section 19's prohibition.[45] The proposed rule includes this definitional exclusion and notes that the FDIC interprets the phrase ''offenses involving the possession of controlled substances'' to include, at a minimum, the offenses of simple possession of controlled substances and possession with intent to distribute controlled substances. This interpretation would mark an expansion from the FDIC's current section 19 regulations, which only provide an exclusion for the simple possession of controlled substances. At the same time, this interpretation would track the statutory language of ''offenses involving the possession of controlled substances'' by encompassing the offense of *possession* with intent to distribute controlled substances. The FDIC seeks public comment on the following topic: Is the FDIC's interpretation of ''offense[s] involving the possession of controlled substances'' as applying, at a minimum, to simple possession and possession with intent to distribute appropriate?

7. De minimis *offenses.* The FHBA states that the FDIC may exempt by rule certain *de minimis* offenses from section 19's prohibition. The FDIC considers *de minimis* offenses to be covered offenses for which an application is not required because the FDIC deems the application automatically granted. The FDIC has previously promulgated rules that specified *de minimis* offenses under section 19.[46] However, given this new statutory language, the FDIC is reevaluating its current approach to *de minimis* offenses. Accordingly, the FDIC seeks public comment on the following topic: Is the FDIC's current approach to *de minimis* offenses appropriate? Are there additional offenses that the FDIC should consider *de minimis* under section 19? Please provide support for such a designation.

8. Written comments must be received by the FDIC no later than January 16, 2024.

VI. Regulatory Analysis and Procedure

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (PRA),[47] the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently

program entr[y] all occurred.'' *See* 12 CFR 303.227(b)(1).

[41] 12 U.S.C. 1829(c)(1)(B).

[42] 12 U.S.C. 1829(a)(1).

[43] *See* 12 U.S.C. 1829(g)(2).

[44] *See* 12 U.S.C. 1829(c)(2).

[45] 12 U.S.C. 1829(g)(2)(C)(ii).

[46] *See* 12 CFR 303.227.

[47] 44 U.S.C. 3501 *et seq.*

valid Office of Management and Budget (OMB) control number.

The FDIC is revising its section 19 application form to conform with the changes to section 19 under the FHBA. These changes will amend the FDIC's existing information collection associated with this proposed rule, entitled ''Application Pursuant to Section 19 of the Federal Deposit Insurance Act'' (3064–0018). For this reason, the information-collection requirements contained in this proposed rule will be submitted by the FDIC to OMB for review and approval under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and § 1320.11 of the OMB's implementing regulations (5 CFR part 1320). Based on available data, the number of respondents and the estimated annual burden associated with the information collection will decrease. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility;

(b) The accuracy of the estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on the collection of information should be sent to the address listed in the **ADDRESSES** section of this document. A copy of the comments may also be submitted to the OMB desk officer: By mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503, or by facsimile to 202–395–6974; or email to *oira_submission@omb.eop.gov,* Attention, Federal Banking Agency Desk Officer.

Information Collection

Title: ''Application Pursuant to Section 19 of the Federal Deposit Insurance Act''.

OMB Number: 3064–0018.

Affected Public: Insured depository institutions and individuals.

SUMMARY OF ESTIMATED ANNUAL BURDENS

[OMB No. 3064–0018]

IC Description	Type of burden (obligation to respond)	Frequency of response	Number of respondents	Number of responses/ respondent	Hours per response	Annual burden (hours)
Application Pursuant to Section 19 of the Federal Deposit Insurance Act.	Reporting (Required to obtain or retain benefits).	On occasion ...	76	1	16	1,216
Total Annual Burden Hours:	....	....	....	....	....	1,216

Source: FDIC.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.[48] However, an initial regulatory flexibility analysis is not required if the agency certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $850 million.[49] Generally, the FDIC considers a significant economic impact to be a quantified effect in excess of 5 percent of total annual salaries and benefits or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of one or more of these thresholds typically represent significant economic impacts for FDIC-supervised institutions.

As discussed further below, the FDIC certifies that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of FDIC-supervised small entities.

As of the quarter ending June 30, 2023, the FDIC insured 4,654 depository institutions, of which 3,373 are defined as small banking organizations for the purposes of the RFA.[50] In the period from 2020 through 2022, the FDIC received 9 bank-sponsored section 19 applications from small, FDIC-insured institutions, an average of 3 per year. Additionally, the FDIC received 202 section 19 applications from individuals during the same period, an average of about 67 per year.[51] To determine the maximum number of small, FDIC-insured institutions that could be affected by the proposed rule, this analysis assumes that each applicant is seeking employment at a different bank and that each bank is a small, FDIC-insured institution. Based on these assumptions, 70 (2.1 percent of) small, FDIC-insured institutions, on average, annually, could be affected by the proposed rule.[52] Section 19 applications from individuals are compelled by the applicant's intent to seek employment at FDIC-insured institutions, many of which are not small. Therefore, the FDIC believes that the number of small, FDIC-insured institutions affected by the proposed rule is likely to be less than 70.

As discussed in the **SUPPLEMENTARY INFORMATION** section, the proposed rule would align the FDIC's regulations with the FHBA's provisions, make additional

[48] 5 U.S.C. 601 *et seq.*

[49] The SBA defines a small banking organization as having $850 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended by 87 FR 69118, effective December 19, 2022). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses an IDI's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the insured depository institution is ''small'' for the purposes of the RFA.

[50] FDIC Call Report, March 31, 2023.

[51] FDIC Application Tracking System.

[52] (70/3,433) * 100 = 2.04 percent.

changes to further clarify the FDIC's regulations related to section 19, more closely align the FDIC's section 19 regulations with those of other Federal financial regulators, and make a number of non-substantive, technical edits. Most of the proposed changes were precipitated by the FHBA—which was effective immediately upon passage—and the proposed rule aligns the FDIC's regulations with these elements of the FHBA; therefore, most of the associated changes in the proposed rule will have no direct effect on individuals or IDIs. Further, since the FDIC estimates that a maximum of 70 small, FDIC-insured institutions could be affected by the proposed rule, on average, annually, any direct affects realized as a result of the proposed rule are likely to be small and affect a relatively small number of entities.

In light of the foregoing, the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this proposed rule have any significant effects on small entities that the FDIC has not identified?

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act [53] requires each Federal banking agency (FBA) to use plain language in its proposed and final rules published after January 1, 2000. The FDIC has sought to present the proposed rule in a simple and straightforward manner. The FDIC invites comments on whether the proposal is clearly stated and effectively organized, and how the FDIC might make the proposal easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could it present the rule more clearly?
- Have we clearly stated the requirements of the rule? If not, how could the rule be more clearly stated?
- Does the rule contain technical jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

[53] Public Law 106–102, sec. 722, 113 Stat. 1338, 1471 (1999), 12 U.S.C. 4809.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Under section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[54] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each FBA must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of the RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[55] The FDIC invites comments that further will inform its consideration of RCDRIA.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 308

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Claims, Crime, Equal access to justice, Fraud, Investigations, Lawyers, Penalties, Savings associations.

Authority and Issuance

For the reasons stated in the preamble and under the authority of 12 U.S.C. 1819 (Seventh and Tenth), the FDIC proposes to amend 12 CFR parts 303 and 308 as follows:

PART 303—FILING PROCEDURES

■ 1. The authority citation for part 303 is revised to read as follows:

Authority: 12 U.S.C. 378, 1464, 1813, 1815, 1817, 1818, 1819(a) (Seventh and Tenth), 1820, 1823, 1828, 1829, 1831a, 1831e, 1831*o*, 1831p–1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207, 5414, 5415, and 15 U.S.C. 1601–1607.

[54] 12 U.S.C. 4802(a).

[55] 12 U.S.C. 4802.

■ 2. Revise subpart L, consisting of §§ 303.220 through 303.231, to read as follows:

Subpart L—Section 19 of the FDI Act (Consent to Service of Persons Convicted of, or Who Have Program Entries for, Certain Criminal Offenses)

Sec.

§ 303.220 What is section 19 of the Federal Deposit Insurance Act?

(a) This subpart covers applications under section 19 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1829. The FDIC refers to such applications as ''consent applications.'' Under section 19, any person who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering, or has agreed to enter into a pretrial diversion or similar program (program entry) in connection with a prosecution for such offense (collectively, Covered Offenses), may not become, or continue as, an institution-affiliated party (IAP) of an insured depository institution (IDI); own or control, directly or indirectly, any IDI; or otherwise participate, directly or indirectly, in the conduct of the affairs of any IDI without the prior written consent of the FDIC.

(b) In addition, the law prohibits an IDI from permitting such a person to engage in any conduct or to continue any relationship prohibited by section 19. IDIs must therefore make a reasonable, documented inquiry to verify an applicant's history to ensure that a person who has a Covered Offense under section 19 is not hired or permitted to participate in its affairs without the written consent of the FDIC issued under this subpart. FDIC-supervised IDIs may extend a conditional offer of employment contingent on the completion of a background check satisfactory to the institution to determine if the applicant is prohibited under section 19, but the applicant may not work for, be employed by, or otherwise participate in the affairs of the IDI until the IDI has determined that the applicant is not prohibited under section 19.

(c) If there is a conviction or program entry covered by the prohibitions of section 19, an application under this subpart must be filed seeking the FDIC's consent to become, or to continue as, an IAP; to own or control, directly or indirectly, an IDI; or to otherwise participate, directly or indirectly, in the affairs of the IDI. The application must be filed, and consented to, prior to serving in any of the foregoing capacities unless such application is not required under the subsequent provisions of this subpart. The purpose of an application is to provide the applicant an opportunity to demonstrate that, notwithstanding the prohibition, a person is fit to participate in the conduct of the affairs of an IDI without posing a risk to its safety and soundness or impairing public confidence in that institution. The burden is upon the applicant to establish that the application warrants approval.

§ 303.221 Who is covered by section 19?

(a) Persons covered by section 19 include IAPs, as defined by 12 U.S.C. 1813(u), and others who are participants in the conduct of the affairs of an IDI. Therefore, all directors, officers, and employees of an IDI who fall within the scope of section 19, including *de facto* employees, as determined by the FDIC based upon generally applicable standards of employment law, will also be subject to section 19. Whether other persons are covered by section 19 depends upon their degree of influence or control over the management or affairs of an IDI. For example, section 19 would apply to an officer or director of an IDI's holding company to the extent that they have the power to define and direct the management or affairs of an IDI. Similarly, directors and officers of affiliates, subsidiaries, or joint ventures of an IDI or its holding company will be covered if they participate in the affairs of the IDI or are in a position to influence or control the management or affairs of the IDI. Typically, an independent contractor does not have a relationship with the IDI other than the activity for which the institution has contracted. However, an independent contractor who influences or controls the management or affairs of the IDI would be covered by section 19.

(b) The term *person,* for purposes of section 19, means an individual, and does not include a corporation, firm, or other business entity.

(c) Individuals who file an application with the FDIC under the provisions of section 19 who also seek to participate in the affairs of a bank holding company or savings and loan holding company may have to comply with any filing requirements of the Board of the Governors of the Federal Reserve System under 12 U.S.C. 1829(d) and (e).

(d) Section 19 specifically prohibits a person subject to its provisions from owning or controlling, directly or indirectly, an IDI. The terms *control* and *ownership* under section 19 shall have the meaning given to those terms in subpart E of this part (including the rebuttable presumptions stated in subpart E).

(1) A person will be deemed to exercise ''control'' if that person—

(i) Has the ability to direct the management or policies of an IDI;

(ii) Has the power to vote 25 percent or more of the voting shares of an IDI; or

(iii) Has the power to vote 10 percent of the voting shares of an IDI if—

(A) No other person owns, controls, or has the power to vote more shares; or

(B) The institution has registered securities under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l).

(2) Under this paragraph (d), a person will be deemed to ''own'' an IDI if that person owns—

(i) 25 percent or more of the institution's voting stock; or

(ii) 10 percent of the voting shares if—

(A) No other person owns more; or

(B) The institution has registered securities under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l).

(3) The standards in this paragraph (d) would also apply to an individual acting in concert with others so as to have such ownership or control. Absent the FDIC's consent, persons subject to the prohibitions of section 19 must divest their control or ownership of shares above the foregoing limits.

§ 303.222 Which offenses qualify as "Covered Offenses" under section 19?

(a) *Categories of Covered Offenses.* The conviction or program entry must be for a criminal offense involving dishonesty, breach of trust, or money laundering.

(1) The term *criminal offense involving dishonesty*—

(i) Means an offense under which an individual, directly or indirectly—

(A) Cheats or defrauds; or

(B) Wrongfully takes property belonging to another in violation of a criminal statute;

(ii) Includes an offense that Federal, State, or local law defines as dishonest, or for which dishonesty is an element of the offense; and

(iii) Does not include—

(A) A misdemeanor criminal offense committed more than one year before the date on which an individual files a consent application, excluding any period of incarceration; or

(B) An offense involving the possession of controlled substances. At a minimum, this exclusion applies to criminal offenses involving the simple possession of a controlled substance and possession with intent to distribute a controlled substance. This exclusion may also apply to other drug-related offenses depending on the statutory elements of the offenses or from court determinations that the statutory provisions of the offenses do not involve dishonesty, breach of trust, or money laundering, as noted in paragraph (b) of this section. Potential applicants may contact their appropriate FDIC Regional Office if they have questions about whether their offenses are covered under section 19.

(iv) The term *offense committed* in paragraph (a)(1)(iii)(A) of this section means the last date of the underlying misconduct. In instances with multiple offenses, *offense committed* means the last date of any of the underlying offenses.

(2) The term *breach of trust* means a wrongful act, use, misappropriation, or omission with respect to any property or fund that has been committed to a person in a fiduciary or official capacity, or the misuse of one's official or fiduciary position to engage in a wrongful act, use, misappropriation, or omission.

(b) *Elements of the offense.* Whether a crime involves dishonesty, breach of trust, or money laundering will be determined from the statutory elements of the offense itself or from court determinations that the statutory provisions of the offense involve dishonesty, breach of trust, or money laundering.

(c) *Certain older offenses excluded*—(1) *Exclusions for certain older offenses.* Section 19 does not apply to an offense if—

(i) It has been 7 years or more since the offense occurred; or

(ii) The individual was incarcerated with respect to the offense and it has been 5 years or more since the individual was released from incarceration.

(iii) The term *offense occurred* means the last date of the underlying misconduct. In instances with multiple Covered Offenses, *offense occurred* means the last date of any of the underlying offenses.

(2) *Offenses committed by individuals 21 year of age or younger.* For individuals who committed an offense when they were 21 years of age or younger, section 19 does not apply to the offense if it has been more than 30 months since the sentencing occurred. The term *sentencing occurred* means the date on which a court imposed the sentence, not the date on which all conditions of sentencing were completed.

(3) *Limitation.* This paragraph (c) does not apply to an offense described under 12 U.S.C. 1829(a)(2).

(d) *Designated lesser offenses excluded.* Section 19 does not apply to the following offenses, if one year or more has passed since the applicable conviction or program entry: using fake identification; shoplifting; trespassing; fare evasion; and driving with an expired license or tag.

(e) *Foreign convictions.* Individuals who are convicted of or enter into a pretrial diversion program for a criminal offense involving dishonesty, breach of trust, or money laundering in any foreign jurisdiction are subject to section 19, unless the offense is otherwise excluded by this subpart.

§ 303.223 What constitutes a conviction under section 19?

(a) *Convictions requiring an application.* There must be a conviction of record. Section 19 does not cover arrests or pending cases not brought to trial, unless the person has a program entry as set out in § 303.224. Section 19 does not cover acquittals or any conviction that has been reversed on appeal, unless the reversal was for the purpose of re-sentencing. A conviction with regard to which an appeal is pending requires an application. A conviction for which a pardon has been granted will require an application.

(b) *Convictions not requiring an application.* When an individual is charged with a Covered Offense and, in the absence of a program entry as set out in § 303.224, is subsequently convicted of an offense that is not a Covered Offense, the conviction is not subject to section 19.

(c) *Expungement, dismissal, and sealing.* A conviction is not considered a conviction of record and does not require an application if—

(1) There is an order of expungement, sealing, or dismissal that has been issued in regard to the conviction in connection with such offense, or if a conviction has been otherwise expunged, sealed, or dismissed by operation of law; and

(2) It is intended by the language in the order itself, or in the legislative provisions under which the order was issued, or in other legislative provisions, that the conviction shall be destroyed or sealed from the individual's State, Tribal, or Federal record, even if exceptions allow the conviction to be considered for certain character and fitness evaluation purposes.

(d) *Youthful offenders.* An adjudication by a court against a person as a ''youthful offender'' (or similar term) under any youth-offender law applicable to minors as defined by state law, or any judgment as a ''juvenile delinquent'' (or similar term) by any court having jurisdiction over minors as defined by State law, does not require an application. Such an adjudication does not constitute a matter covered under section 19 and is not a conviction or program entry for determining the applicability of § 303.227.

§ 303.224 What constitutes a pretrial diversion or similar program under section 19?

(a) The term *pretrial diversion or similar program* (program entry) means a program characterized by a suspension or eventual dismissal or reversal of charges or criminal prosecution upon agreement by the accused to restitution, drug or alcohol rehabilitation, anger management, or community service. Whether the outcome of a case constitutes a program entry is determined by relevant Federal, State, or local law, and, if not so designated under applicable law, then the determination of whether a disposition is a program entry will be made by the FDIC on a case-by-case basis. Program entries prior to November 29, 1990, are not covered by section 19.

(b) When a Covered Offense either is reduced by a program entry to an offense that would otherwise not be covered by section 19 or is dismissed upon successful completion of a program entry, the offense remains a Covered Offense for purposes of section 19. The Covered Offense will require an application unless it is *de minimis* as provided by § 303.227.

(c) Expungements, dismissals, or sealings of program entries will be treated the same as those for convictions.

§ 303.225 What are the types of applications that can be filed?

(a) The FDIC will accept applications from—

(1) An individual;

(2) An IDI applying on behalf of an individual;

(3) A depository institution holding company applying on behalf of an individual with respect to an IDI subsidiary of the holding company; and

(4) A depository institution holding company applying on behalf of an individual who will work at the holding company but also participate in the affairs of the IDI or who would be in a position to influence or control the management or affairs of the IDI, in accordance with § 303.221(a).

(b) An individual or an institution may file applications at separate times. Under either approach, the application(s) must be filed with the appropriate FDIC Regional Office, as required by this subpart.

§ 303.226 When may an application be filed?

Except for situations in which no application is required under section 19 and this subpart, an application must be filed when there is a conviction by a court of competent jurisdiction for a Covered Offense by any adult or minor treated as an adult, or when such person has a program entry regarding that offense. Before an application may be filed, all of the sentencing requirements associated with a conviction, or conditions imposed by the program entry, including but not limited to, imprisonment, fines, conditions of rehabilitation, and probation requirements, must be completed, and the case must be considered final by the procedures of the applicable jurisdiction. The FDIC's application forms as well as additional information concerning section 19 can be accessed at the FDIC's Regional Offices or on the FDIC's website.

§ 303.227 *De minimis* offenses.

(a) *In general.* Approval is automatically granted and an application will not be required where all of the following *de minimis* criteria are met.

(1) The individual has been convicted of, or has program entries for, no more than two Covered Offenses, including those subject to paragraph (b) of this section; and for each Covered Offense, all of the sentencing requirements associated with the conviction, or conditions imposed by the program entry, have been completed (the sentence- or program-completion requirement does not apply under paragraph (b)(2) of this section).

(2) For each Covered Offense, the individual could have been sentenced to a term of confinement in a correctional facility of three years or less and/or a fine of $2,500 or less, and the individual actually served three days or less of jail time for each Covered Offense.

(3) Jail time under paragraph (a)(2) of this section is calculated based on the time an individual spent incarcerated as

a punishment or a sanction—not as pretrial detention—and does not include probation or parole where an individual was restricted to a particular jurisdiction or was required to report occasionally to an individual or a specific location. Jail time includes confinement to a psychiatric treatment center in lieu of a jail, prison, or house of correction on mental-competency grounds. The definition is not intended to include either of the following: persons who are restricted to a substance-abuse treatment program facility for part or all of the day; or persons who are ordered to attend outpatient psychiatric treatment.

(4) If there are two convictions or program entries for a Covered Offense, each conviction or program entry was entered at least three years prior to the date an application would otherwise be required, except as provided in paragraph (b)(1) of this section, and each Covered Offense was not committed against an IDI or insured credit union.

(b) *Other types of offenses for which the de minimis exception applies and no application is required*—(1) *Age of person at time of Covered Offense.* If there are two convictions or program entries for a Covered Offense, and the actions that resulted in both convictions or program entries all occurred when the individual was 21 years of age or younger, then the *de minimis* criteria in paragraph (a)(3) of this section shall be met if the convictions or program entries were entered at least 18 months prior to the date an application would otherwise be required.

(2) *Convictions or program entries for insufficient funds checks.* Convictions or program entries of record based on the writing of ‘‘bad’’ or insufficient funds check(s) shall be considered *de minimis* offenses under this provision if the following conditions apply:

(i) The aggregate total face value of all ‘‘bad’’ or insufficient funds check(s) cited across all the conviction(s) or program entry(ies) for ‘‘bad’’ or insufficient funds checks is $2,000 or less;

(ii) No IDI or insured credit union was a payee on any of the ‘‘bad’’ or insufficient funds checks that were the basis of the conviction(s) or program entry(ies); and

(iii) The individual has no more than one other *de minimis* offense under this section.

(3) *Convictions or program entries for small-dollar, simple theft.* Convictions or program entries based on the simple theft of goods, services, or currency (or other monetary instrument) shall be considered *de minimis* offenses under this paragraph (b) if the following conditions apply:

(i) The value of the currency, goods, or services taken is $1,000 or less;

(ii) The theft was not committed against an IDI or insured credit union;

(iii) The individual has no more than one other *de minimis* offense under this section; and

(iv) If there are two *de minimis* offenses under this section, each conviction or program entry was entered at least three years prior to the date an application would otherwise be required, or at least 18 months prior to the date an application would otherwise be required if the actions that resulted in the conviction or program entry all occurred when the individual was 21 years of age or younger.

(v) Simple theft excludes burglary, forgery, robbery, identity theft, and fraud.

(c) *Fidelity bond coverage and disclosure to institutions.* Any person who meets the criteria under this section shall be covered by a fidelity bond to the same extent as others in similar positions, and must disclose the presence of the conviction(s) or program entry(ies) to all IDIs in the affairs of which that person intends to participate.

(d) *Non-qualifying convictions or program entries.* No conviction or program entry for a violation of the Title 18 sections set out in 12 U.S.C. 1829(a)(2) can qualify under any of the *de minimis* exceptions set out in this section.

§ 303.228 How to file an application.

Forms and instructions should be obtained from the FDIC's website (*www.fdic.gov*), and the application(s) must be filed with the appropriate FDIC Regional Office. An application may be filed by an individual and by an IDI or depository institution holding company on behalf of an individual. The appropriate Regional Office for an institution-sponsored application is the office covering the state where the institution's home office is located. The appropriate Regional Office for an individual application is the office covering the state where the person resides. States covered by each FDIC Regional Office can be located on the FDIC's website.

§ 303.229 How an application is evaluated.

(a) *Criminal-history records.* In reviewing an application, the FDIC will—

(1) Primarily rely on the criminal history record of the Federal Bureau of Investigation (rap sheet); and

(2) Provide such record to the applicant to review for accuracy.

(b) *Certified copies.* The FDIC will not require an applicant to provide certified copies of criminal history records unless the FDIC determines that there is a clear and compelling justification to require additional information to verify the accuracy of the criminal history record of the Federal Bureau of Investigation.

(c) *Ultimate determinations.* The ultimate determinations in assessing an application are whether the person has demonstrated their fitness to participate in the conduct of the affairs of an IDI, and whether the affiliation, ownership, control, or participation by the person in the conduct of the affairs of the institution may constitute a threat to the safety and soundness of the institution or the interests of its depositors or threaten to impair public confidence in the institution.

(d) *Individualized assessment.* When evaluating applications, the FDIC will conduct an individualized assessment that will consider:

(1) Whether the conviction or program entry is subject to section 19, and the specific nature and circumstances of the offense;

(2) Whether the participation directly or indirectly by the person in any manner in the conduct of the affairs of the IDI constitutes a threat to the safety and soundness of the institution or the interests of its depositors or threatens to impair public confidence in the institution;

(3) Evidence of rehabilitation, including the applicant's age at the time of the conviction or program entry, the time that has elapsed since the conviction or program entry, and the relationship of the individual's offense to the responsibilities of the applicable position;

(4) The individual's employment history, letters of recommendation, certificates documenting participation in substance-abuse programs, successful participating in job preparation and educational programs, and other relevant evidence;

(5) The ability of management of the IDI to supervise and control the person's activities;

(6) The level of ownership or control the person will have of an IDI;

(7) The applicability of the IDI's fidelity bond coverage to the person; and

(8) Any additional factors in the specific case that appear relevant to the application or the applicant including, but not limited to, the opinion or position of the primary Federal or State regulator.

(e) *No re-consideration of guilt.* The question of whether a person, who was convicted of a crime or who agreed to a program entry, was guilty of that crime shall not be at issue in a proceeding under this subpart or under 12 CFR part 308, subpart M.

(f) *Factors considered for enumerated offenses.* The foregoing factors will also be applied by the FDIC to determine whether the interests of justice are served in seeking an exception in the appropriate court when an application is made to terminate the ten-year ban prior to its expiration date under 12 U.S.C. 1829(a)(2) for certain Federal offenses.

(g) *Mandatory conditions of approval.* All approvals and orders will be subject to the condition that the person be covered by a fidelity bond to the same extent as others in similar positions. If the FDIC has approved an application filed by an individual and has issued a consent order, the individual must disclose the presence of the conviction(s) or program entry(ies) to all IDIs in the affairs of which they wish to participate.

(h) *Institution-sponsored applications: work at same employer.* When deemed appropriate by the FDIC, institution-sponsored applications are to allow the individual to work for the same employer (without restrictions on the location) and across positions, except that the prior consent of the FDIC (which may require a new application) will be required for any proposed significant changes in the individual's security-related duties or responsibilities, such as promotion to an officer or other positions that the employer determines will require higher security screening credentials.

(i) *Work at a different employer after certain approvals.* In situations in which an approval has been granted for a person to participate in the affairs of a particular IDI and the person subsequently seeks to participate at another IDI, another application must be submitted and approved by the FDIC prior to the person participating in the affairs of the other IDI.

§ 303.230 What will the FDIC do if the application is denied?

(a) The FDIC will inform the applicant in writing that the application has been denied and summarize or cite the relevant considerations specified in § 303.229.

(b) The denial will also notify the applicant that a written request for a hearing under 12 CFR part 308, subpart M, may be filed with the FDIC Executive Secretary within 60 days after the denial. The request for a hearing must include the relief desired, the grounds supporting the request for relief, and any supporting evidence.

§ 303.231 Waiting time for a subsequent application if an application is denied.

(a) An application under section 19 may be made in writing at any time more than one year after the issuance of a decision denying an application under section 19. If the original denial is subject to a request for a hearing, then the subsequent application may be filed at any time more than one year after the decision of the FDIC Board of Directors, or its designee, denying the application. Unless with the passage of time the individual is no longer subject to section 19, the prohibition against participating in the affairs of an IDI under section 19 shall continue until the individual has been granted consent in writing to participate in the affairs of an IDI by the Board of Directors or its designee.

(b) An institution-sponsored application is not subject to the one-year waiting period if the application—

(1) Follows the denial of an individual application; or

(2) Follows the denial of an institution-sponsored application and the subsequent application is sponsored by a different institution or is for a different position.

PART 308—RULES OF PRACTICE AND PROCEDURE

■ 3. The authority citation for part 308 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1464, 1467(d), 1467a, 1468, 1815(e), 1817, 1818, 1819, 1820, 1828, 1829, 1829(b), 1831i, 1831m(g)(4), 1831o, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717, 5412(b)(2)(C), 5414(b)(3); 15 U.S.C. 78(h) and (i), 78o(c)(4), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Pub. L. 104–134, sec. 31001(s), 110 Stat. 1321; Pub. L. 109–351, 120 Stat. 1966; Pub. L. 111–203, 124 Stat. 1376; Pub. L. 114–74, sec. 701, 129 Stat. 584.

■ 4. Revise § 308.156 to read as follows:

§ 308.156 Scope.

The rules and procedures set forth in this subpart shall apply to an application filed under section 19 of the FDI Act, 12 U.S.C. 1829 (section 19), and 12 CFR part 303, subpart L, by an insured depository institution (IDI), depository institution holding company, or an individual (any of which could be termed an applicant). Section 19 states that if an individual has been convicted of any criminal offense involving dishonesty, a breach of trust, or money laundering, or who has agreed to enter into a pretrial diversion or similar program in connection with the prosecution of such offense, the individual must seek the prior written consent of the FDIC to: become or continue as an institution-affiliated party (IAP) with respect to an IDI; own or control directly or indirectly an IDI; or participate directly or indirectly in any manner in the conduct of the affairs of an IDI. This subpart shall apply only after such application has been denied under 12 CFR part 303, subpart L.

■ 5. Amend § 308.158 by revising paragraphs (b) and (d) through (f) to read as follows:

§ 308.158 Hearings.

* * * * *

(b) *Burden of proof.* The burden of going forward with a *prima facie* case shall be upon the FDIC. The ultimate burden of proof shall be upon the applicant seeking the FDIC's consent for an individual to: become or continue as an IAP with respect to an IDI; own or control directly or indirectly an IDI; or participate directly or indirectly in any manner in the conduct of the affairs of an IDI.

* * * * *

(d) *Written submissions in lieu of hearing.* The applicant may in writing waive a hearing and elect to have the matter determined on the basis of written submissions.

(e) *Failure to request or appear at hearing.* Failure to request a hearing shall constitute a waiver of the opportunity for a hearing. Failure to appear at a hearing in person or through an authorized representative shall constitute a waiver of a hearing. If a hearing is waived, and if there has not been a written submission in lieu of a hearing, the individual shall remain prohibited under section 19.

(f) *Decision by Board of Directors or its designee.* Within 60 days following the Administrative Officer's certification of the record to the Board of Directors or its designee, the Board of Directors or its designee shall notify the applicant whether the individual shall remain prohibited under section 19. The notification shall state the basis for any decision of the Board of Directors or its designee that is adverse to the applicant.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on October 24, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–23853 Filed 11–13–23; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2149; Project Identifier MCAI–2023–00136–E]

RIN 2120–AA64

Airworthiness Directives; GE Aviation Czech s.r.o. (Type Certificate Previously Held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.) Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2022–13–16, which applies to all GE Aviation Czech s.r.o. (GEAC) (type certificate previously held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.) Model M601D–11 engines; and AD 2022–14–12, which applies to certain GEAC Model M601D–11, M601E–11, M601E–11A, M601E–11AS, M601E–11S, and M601F engines. AD 2022–13–16 requires revising the airworthiness limitations section (ALS) of the existing engine maintenance manual (EMM) to incorporate a visual inspection of the centrifugal compressor case for cracks. AD 2022–14–12 requires replacing the propeller shaft for Model M601F engines. AD 2022–14–12 also requires calculating the accumulated life of the propeller shaft and replacing the propeller shaft, if necessary, for model M601D–11, M601E–11, M601E–11A, M601E–11AS, and M601E–11S engines. Since the FAA issued AD 2022–13–16 and AD 2022–14–12, the manufacturer revised the ALS of the existing EMM to introduce new and more restrictive tasks and limitations, expand the applicability to all Model M601 engines, and incorporate certain requirements addressed by AD 2021–13–07 and AD 2023–01–10, which prompted this proposed AD. This proposed AD would require revising the ALS of the existing EMM and the operator's existing approved engine maintenance or inspection program, as applicable, to incorporate new and more restrictive tasks and limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by December 29, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–2149; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu*. You may find this material on the EASA website at *ad.easa.europa.eu*. It is also available at *regulations.gov* under Docket No. FAA–2023–2149.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Barbara Caufield, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7146; email: *barbara.caufield@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–2149; Project Identifier MCAI–2023–00136–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Barbara Caufield, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021–13–07, Amendment 39–21612 (86 FR 31601, June 15, 2021) (AD 2021–13–07) for all GEAC Model M601D–11, M601E–11, M601E–11A, M601E–11AS, M601E–11S, and M601F engines. AD 2021–13–07 was prompted by an MCAI originated by EASA. EASA issued EASA Emergency AD 2021–0125–E, dated May 7, 2021 (EASA Emergency AD 2021–0125–E) to correct an unsafe condition identified as the manufacturer finding errors in the ALS of the existing EMM, including errors in the formula to determine the consumed equivalent flight cycles of critical parts and errors with certain part numbers. The manufacturer also determined that the life limit of a certain compressor case installed on Model M601E engines was not listed in the ALS of the applicable EMM.

AD 2021–13–07 requires recalculating the life of critical parts and replacing critical parts, if necessary. AD 2021–13–

07 also requires replacing a certain compressor case. The FAA issued AD 2021–13–07 to prevent failure of the engine.

The FAA issued AD 2022–13–16, Amendment 39–22102 (87 FR 37986, June 27, 2022) (AD 2022–13–16), for all GEAC Model M601D–11 engines. AD 2022–13–16 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2021–0060, dated March 3, 2021 (EASA AD 2021–0060) to correct an unsafe condition identified as the manufacturer revising the ALS to introduce a visual inspection of the centrifugal compressor case for cracks.

AD 2022–13–16 requires revising the ALS of the existing EMM to incorporate a visual inspection of the centrifugal compressor case for cracks. The FAA issued AD 2022–13–16 to prevent failure of the centrifugal compressor case.

The FAA issued AD 2022–14–12, Amendment 39–22117 (87 FR 42066, July 14, 2022) (AD 2022–14–12), for certain GEAC Model M601D–11, M601E–11, M601E–11A, M601E–11AS, M601E–11S, and M601F engines. AD 2022–14–12 was prompted by an MCAI originated by EASA. EASA issued AD 2021–0154, dated July 1, 2021 (EASA AD 2021–0154) to correct an unsafe condition identified as the absence of life limits for the propeller shaft part number M601–6081.6 in the ALS of the applicable EMM, as well as a lack of data necessary for operators to determine the accumulated life of certain propeller shafts, resulting in a propeller shaft life limit that may not have been implemented correctly.

AD 2022–14–12 requires replacing the propeller shaft for Model M601F engines. AD 2022–14–12 also requires calculating the accumulated life of the propeller shaft and replacing the propeller shaft, if necessary, for model M601D–11, M601E–11, M601E–11A, M601E–11AS, and M601E–11S engines. The FAA issued AD 2022–14–12 to prevent failure of the propeller shaft.

The FAA issued AD 2023–01–10, Amendment 39–22304 (88 FR 7578, February 6, 2023) (AD 2023–01–10) for certain GEAC Model M601E–11, M601E–11A, M601E–11AS, M601E–11S, and M601F engines. AD 2023–01–10 was prompted by an MCAI originated by EASA. EASA issued EASA AD 2021–0264, dated November 22, 2021 (EASA AD 2021–0264) to correct an unsafe condition identified as the exclusion of life limits for certain compressor cases and compressor drums from the ALS of the EMM and certain compressor cases that, following rework, were improperly re-identified and had incomplete engine logbook entries.

AD 2023–01–10 requires recalculating the consumed life for certain compressor cases and compressor drums and replacing certain compressor cases and compressor drums, if necessary. The FAA issued AD 2023–01–10 to prevent failure of the compressor case and compressor drum.

Actions Since the Previous ADs Were Issued

Since the FAA issued AD 2021–13–07, AD 2022–13–16, AD 2022–14–12, and AD 2023–01–10, EASA superseded EASA AD 2021–0060 and EASA AD 2021–0154 and issued EASA AD 2023–0020, dated January 23, 2023 (EASA AD 2023–0020) (also referred to as the MCAI). The MCAI states that the manufacturer revised the ALS to incorporate new and more restrictive tasks and limitations, expand the applicability to all model M601 series engines, and include certain requirements that were previously addressed by EASA Emergency AD 2021–0125–E and EASA AD 2021–0264. The MCAI also states that the manufacturer published service information that specifies instructions to determine the accumulated life of certain propeller shafts.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–2149.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2023–0020, which specifies procedures for accomplishment of the actions specified in the ALS, including performing maintenance tasks, replacing life-limited parts, and revising the existing approved maintenance or inspection program, as applicable, by incorporating the instructions and associated thresholds and intervals described in the ALS, as applicable to engine model and depending on engine configuration.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the MCAI described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD and as discussed under ''Differences Between this Proposed AD and the MCAI.''

This proposed AD would terminate the requirements of paragraphs (g)(1) through (3) of AD 2021–13–07 for model M601D–11, M601E–11, M601E–11A, M601E–11AS, M601E–11S, and M601F engines only.

This proposed AD would terminate the requirements of paragraphs (g)(1) through (3) of AD 2023–01–10 for model M601E–11, M601E–11A, M601E–11AS, M601E–11S, and M601F engines only.

The owner/operator (pilot) holding at least a private pilot certificate may revise the ALS of the existing EMM and must enter compliance with the applicable paragraph of this proposed AD into the engine maintenance records in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v). The pilot may perform this action because it only involves revising the pilot's manual. This action could be performed equally well by a pilot or a mechanic. This is an exception to the FAA's standard maintenance regulations.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and CAAs to use this process. As a result, the FAA proposes to incorporate by reference EASA AD 2023–0020 in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0020 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions within the compliance times,'' compliance with this AD requirement is not limited to the section titled

"Required Action(s) and Compliance Time(s)" in EASA AD 2023–0020. Service information required by the EASA AD for compliance will be available at *regulations.gov* under Docket No. FAA–2023–2149 after the FAA final rule is published.

Differences Between This Proposed AD and the MCAI

Where the MCAI applies to Model M601D, M601D–1, M601D–2, M601D–11NZ, M601E, M601E–21, M601FS, and M601Z engines, this proposed AD does not, as these engine models are not type certificated in the United States.

Where the MCAI defines the AMP as the approved Aircraft Maintenance Programme containing the tasks on the basis of which the scheduled maintenance is conducted to ensure the continuing airworthiness of each operated engine, this proposed AD defines the AMP as the aircraft maintenance program containing the tasks on the basis of which the scheduled maintenance is conducted to ensure the continuing airworthiness of each operated airplane.

Where the MCAI specifies the ALS of GEAC EMM No. 0982309, Revision 21, dated November 18, 2022, this proposed AD specifies the ALS of GEAC EMM No. 0982309, Revision 22, dated March 10, 2023. The ALS in Revision 22 of GEAC EMM No. 0982309 is unchanged from Revision 21.

Where paragraph (3) of the MCAI specifies revising the approved Aircraft Maintenance Programme within 12 months after the effective date of EASA AD 2023–0020, this proposed AD would require revising the ALS of the existing approved engine maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

This proposed AD would not require compliance with paragraphs (1), (2), (4), and (5) of the MCAI.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 42 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise the ALS	1 work-hour × $85 per hour = $85	$0	$85	$3,570

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2022–13–16, Amendment 39–22102 (87 FR 37986, June 27, 2022); and Airworthiness Directive 2022–14–12, Amendment 39–22117 (87 FR 42066, July 14, 2022); and

■ b. Adding the following new airworthiness directive:

GE Aviation Czech s.r.o. (Type Certificate Previously Held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.): Docket No. FAA–2023–2149; Project Identifier MCAI–2023–00136–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 29, 2023.

(b) Affected ADs

(1) This AD affects AD 2021–13–07, Amendment 39–21612 (86 FR 31601, June 15, 2021) (AD 2021–13–07).

(2) This AD replaces AD 2022–13–16, Amendment 39–22102 (87 FR 37986, June 27, 2022) (AD 2022–13–16).

(3) This AD replaces AD 2022–14–12, Amendment 39–22117 (87 FR 42066, July 14, 2022) (AD 2022–14–12).

(4) This AD affects AD 2023–01–10, Amendment 39–22304 (88 FR 7578, February 6, 2023) (AD 2023–01–10).

(c) Applicability

This AD applies to GE Aviation Czech s.r.o. (GEAC) (type certificate previously held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.) Model M601D–11, M601E–11, M601E–11A, M601E–11AS, M601E–11S, and M601F engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7210, Turbine Engine Reduction Gear.

(e) Unsafe Condition

This AD was prompted by the manufacturer revising the airworthiness limitations section (ALS) of the existing engine maintenance manual (EMM) to introduce new and more restrictive tasks and limitations and associated thresholds and intervals for life-limited parts. The FAA is issuing this AD to prevent failure of the engine. The unsafe condition, if not addressed, could result in uncontained release of a critical part, damage to the engine, and damage to the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions

(1) Except as specified in paragraph (h) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0020, dated January 23, 2023 (EASA AD 2023–0020).

(2) The action required by paragraph (g)(1) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(h) Exceptions to EASA AD 2023–0020

(1) Where EASA AD 2023–0020 defines the AMP as ''The Aircraft Maintenance Programme (AMP) contains the tasks on the basis of which the scheduled maintenance is conducted to ensure the continuing airworthiness of each operated engine,'' replace that text with ''the aircraft maintenance program containing the tasks on the basis of which the scheduled maintenance is conducted to ensure the continuing airworthiness of each operated airplane.''

(2) Where EASA AD 2023–0020 specifies the ALS as ''The Airworthiness Limitations Section of the GEAC Engine Maintenance Manual (EMM) No. 0982309 Revision 21,'' replace that text with ''The Airworthiness Limitations Section of the GEAC Engine Maintenance Manual (EMM) No. 0982309 Revision 22.'' The ALS in Revision 22 of the EMM is unchanged from Revision 21.

(3) Where EASA AD 2023–0020 refers to its effective date, this AD requires using the effective date of this AD.

(4) Where paragraph (3) of EASA AD 2023–0020 specifies ''Within 12 months after the effective date of this AD, revise the approved AMP,'' replace that text with ''Within 90 days after the effective date of this AD, revise the ALS of the existing approved engine maintenance or inspection program, as applicable.''

(5) This AD does not require compliance with paragraphs (1), (2), (4), and (5) of EASA AD 2023–0020.

(6) This AD does not adopt the Remarks paragraph of EASA AD 2023–0020.

(i) Provisions for Alternative Actions and Intervals

After performing the actions required by paragraph (g) of this AD, no alternative actions and associated thresholds and intervals, including life limits, are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2023–0020.

(j) Terminating Action for Certain Actions Required by Affected ADs

(1) Accomplishing the actions required by paragraph (g) of this AD terminates the requirements of paragraphs (g)(1) through (3) of AD 2021–13–07 for model M601D–11, M601E–11, M601E–11A, M601E–11AS, M601E–11S, and M601F engines only.

(2) Accomplishing the actions required by paragraph (g) of this AD terminates the requirements of paragraphs (g)(1) through (3) of AD 2023–01–10 for model M601E–11, M601E–11A, M601E–11AS, M601E–11S, and M601F engines only.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (l) of this AD and email to *ANE-AD-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(l) Additional Information

For more information about this AD, contact Barbara Caufield, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7146; email: *barbara.caufield@faa.gov.*

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2023–0020, dated January 23, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0020, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.*

Issued on November 2, 2023.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–24639 Filed 11–13–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–128276–12]

RIN 1545–BO07

Recognition and Deferral of Section 987 Gain or Loss; Comment Period Reopening

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Department of the Treasury and the IRS are reopening the comment period for REG–128276–12, published in the **Federal Register** on December 8, 2016, relating to the determination and recognition of taxable income or loss and foreign currency gain or loss with respect to a qualified business unit.

DATES: The comment period for REG–128276–12 (81 FR 88882, December 8, 2016) (the ''2016 proposed regulations'') is reopened, and additional written or electronic comments and requests for a public hearing must be received by February 12, 2024.

ADDRESSES: Commenters are strongly encouraged to submit additional public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–128276–12) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (the ''Treasury Department'') and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG–128276–12), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Jack Zhou at (202) 317–6938; concerning submissions of comments, requests for a public hearing, or access to a public hearing, Vivian Hayes at (202) 317–6901 (not toll-free numbers) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION: On December 8, 2016, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–128276–12, 81 FR 88882, December 8,

2016) (the ''2016 proposed regulations'') in the **Federal Register**. The 2016 proposed regulations cross-reference temporary regulations in Treasury Decision 9795 (81 FR 88854, December 8, 2016) (the ''temporary regulations''), which provided rules under section 987 of the Internal Revenue Code relating to the determination and recognition of taxable income or loss and foreign currency gain or loss with respect to a qualified business unit. On May 13, 2019, the Treasury Department and the IRS published Treasury Decision 9857 (84 FR 20790, May 13, 2019), which finalized parts of the 2016 proposed regulations and withdrew one section of the temporary regulations. The temporary regulations that were not finalized or withdrawn expired on December 6, 2019. A notice of proposed rulemaking published in this issue of the **Federal Register** contains new proposed regulations under section 987 and withdraws parts of the 2016 proposed regulations. The parts of the 2016 proposed regulations that remain outstanding include: (1) rules regarding the treatment of section 988 transactions of a section 987 QBU (*see* §§ 1.987–1, 1.987–3, and 1.988–1 of the 2016 proposed regulations); (2) rules regarding QBUs with the U.S. dollar as their functional currency (*see* §§ 1.987–1 and 1.987–6 of the 2016 proposed regulations); (3) rules regarding the translation of income used to pay creditable foreign income taxes (*see* § 1.987–3 of the 2016 proposed regulations); and (4) rules requiring the deferral of certain section 988 loss that arises with respect to related-party loans (*see* § 1.988–2 of the 2016 proposed regulations).

The Treasury Department and the IRS are considering finalizing these parts of the 2016 proposed regulations and, therefore, are reopening the comment period for 90 days. Comments that were previously submitted in accordance with the 2016 proposed regulations will be considered and do not need to be resubmitted.

Comments and Requests for a Public Hearing: Before the parts of the 2016 proposed regulations that remain outstanding are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in this Notice in the ''Addresses'' section. Any comments submitted will be made available at *https://www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**.

Oluwafunmilayo A. Taylor,

Section Chief, Publications and Regulations Section, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2023–24650 Filed 11–9–23; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 53

[REG–142338–07]

RIN 1545–BI33

Taxes on Taxable Distributions From Donor Advised Funds Under Section 4966

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding excise taxes on taxable distributions made by a sponsoring organization from a donor advised fund (DAF), and on the agreement of certain fund managers to the making of such distributions. The proposed regulations would provide guidance regarding DAFs and taxable distributions. The proposed regulations generally would apply to certain organizations, including community foundations and other charitable organizations, that maintain one or more DAFs, and to other persons involved with the DAFs, including donors, donor-advisors, related persons, and certain fund managers.

DATES: Written or electronic comments and requests for a public hearing must be received by January 16, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–142338–07) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment received to its public docket, whether submitted electronically or in hard copy. Send paper submissions to: CC:PA:01:PR (REG–142338–07), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Ward L. Thomas at (202) 317–5800 (not a toll-free number); concerning submission of comments and requests for a public hearing, contact Vivian Hayes by email at *publichearings@irs.gov* (preferred) or by phone at (202) 317–6901 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

I. Overview

Some charitable organizations (including community foundations) establish accounts to which donors may contribute and thereafter provide nonbinding advice or recommendations with regard to distributions from the account or the investment of assets in the account. Such accounts are commonly referred to as ''donor advised funds'' or ''DAFs.'' Sections 1231–1235 of the Pension Protection Act of 2006 (PPA), Public Law 109–280, 120 Stat. 780, 1094–1102 (August 17, 2006), enacted various amendments to the Internal Revenue Code (Code) regarding DAFs. Among these, section 1232 of the PPA amended section 4958 of the Code to add special rules relating to excess benefit transactions with DAFs; section 1231(b) of the PPA added section 4967 to the Code, which imposes an excise tax on prohibited benefits resulting from distributions from DAFs; and section 1231(a) of the PPA added section 4966 of the Code, which imposes excise taxes on taxable distributions made by sponsoring organizations from a DAF, and on the agreement of certain fund managers to the making of such distributions. This notice of proposed rulemaking contains proposed amendments to 26 CFR part 53 (Foundation and Similar Excise Taxes) under section 4966 (proposed regulations).

II. Statutory Provisions

A. Section 4958

Section 4958 imposes an excise tax on any ''excess benefit transaction,'' which is defined generally under section 4958(c)(1) as any transaction in which an economic benefit is provided, the value of which exceeds the value of any consideration received, by an applicable tax-exempt organization (including a section 501(c)(3) sponsoring organization of a DAF) directly or indirectly to or for the use of a disqualified person with respect to a transaction.[1] This excise tax under section 4958 is paid by the disqualified person with respect to the transaction. A separate excise tax, paid by organization managers, is imposed on the participation of any organization manager in the transaction, knowing that it is an excess benefit transaction, unless such participation is not willful and is due to reasonable cause.

Section 1232 of the PPA amended section 4958 to provide that, with respect to any transaction that involves a DAF, a disqualified person includes (1) any donor with respect to the DAF, (2) any donor-advisor with respect to the DAF, and (3) any member of the family, or any 35-percent controlled entity of a donor or donor-advisor or member of their families with respect to the DAF, each, a ''related person,'' and to provide that any grant, loan, compensation, or other similar payment from the DAF to such disqualified person is an excess benefit transaction. For purposes of this special rule for transactions involving DAFs, the excess benefit includes the entire amount of the grant, loan, compensation, or other similar payment. The PPA also amended section 4958 to treat as a disqualified person with respect to a transaction involving a sponsoring organization an investment advisor (or a family member or a 35-percent controlled entity of such person).

B. Section 4966

1. DAFs

Section 4966(d)(2)(A) defines a ''DAF'' generally as a fund or account (1) that is separately identified by reference to contributions of a donor or donors, (2) that is owned and controlled by a sponsoring organization, and (3) with respect to which a donor (or any person appointed or designated by the donor, namely, a donor-advisor) has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in the fund or account by reason of the donor's status as a donor.

Section 4966(d)(2)(B)(i) states that a DAF does not include a fund or account that makes distributions only to a single identified organization or governmental entity. Section 4966(d)(2)(B)(ii) states that a DAF does not include a fund or account with respect to which a donor or a donor-advisor provides advice regarding grants to individuals for travel, study, or similar purposes if (1) the donor's, or the donor-advisor's, advisory privileges are exercised exclusively in the donor's or donor-advisor's capacity as a member of a committee all the members of which are appointed by the sponsoring organization, (2) no combination of donor(s), donor-advisor(s), or persons related to such persons directly or indirectly control the committee, and (3) all grants are awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the sponsoring organization's board of directors, and the procedure is designed to ensure that the grants meet the requirements of section 4945(g)(1), (2), or (3).

Section 4966(d)(2)(C) authorizes the Secretary of the Treasury or her delegate (Secretary) to exempt a fund or account from treatment as a DAF if it (1) is advised by a committee not directly or indirectly controlled by the donor or any donor-advisor (and any related parties), or (2) benefits a single identified charitable purpose.

2. Sponsoring Organizations

Section 4966(d)(1) defines a ''sponsoring organization'' as an organization described in section 170(c) (including a foreign organization that otherwise would be described in section 170(c)(2)), other than a private foundation (as defined in section 509(a)) or a governmental entity (as defined in section 170(c)(1)), that maintains one or more DAFs.

3. Excise Tax on Taxable Distributions

Section 4966(a)(1) imposes a 20 percent excise tax on each taxable distribution, payable by the sponsoring organization with respect to the DAF. Section 4966(c)(1) defines a ''taxable distribution'' as including any distribution from a DAF to any natural person. Section 4966(c)(1) also defines a taxable distribution as including a distribution from a DAF to any other person if (1) the distribution is for any purpose other than a purpose specified in section 170(c)(2)(B),[2] or (2) the sponsoring organization does not exercise expenditure responsibility with respect to the distribution in accordance with section 4945(h).

Section 4966(c)(2) provides that a taxable distribution, however, does not include a distribution from a DAF to (1) any organization described in section 170(b)(1)(A) (other than a disqualified supporting organization), (2) the sponsoring organization of such DAF, or (3) any other DAF. Section 4966(d)(4) defines a ''disqualified supporting organization'' as (1) a Type III supporting organization that is not functionally integrated and (2) any other supporting organization if the donor or any donor-advisor (and any related parties) with respect to a DAF directly or indirectly controls a supported organization of the supporting organization.

4. Excise Tax on Agreement of Fund Manager

Section 4966(a)(2) imposes a five percent excise tax on the agreement of a fund manager to the making of a taxable distribution knowing that it is a taxable distribution, payable by any fund manager who agreed to the making of the distribution. Section 4966(d)(3) defines a ''fund manager'' with respect to any sponsoring organization as (1) an officer, director, or trustee of such sponsoring organization (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the sponsoring organization), and (2) with respect to any act (or failure to act), the employees of the sponsoring organization having authority or responsibility with respect to each act (or failure to act).

Section 4966(b) provides that, if more than one fund manager is liable under section 4966(a)(2), then all such persons are jointly and severally liable with respect to the distribution; however, the maximum amount of tax imposed by section 4966(a)(2) with respect to any one taxable distribution is $10,000.

C. Section 4967

The PPA also added section 4967, which imposes an excise tax on the advice that a donor, donor-advisor, or related person provides regarding a distribution from a DAF that results in such person or any other donor, donor-advisor, or related person receiving, directly or indirectly, a more than incidental benefit. This excise tax is paid by any donor, donor-advisor, or related person who advises the sponsoring organization as to the distribution or who receives the prohibited benefit. A separate excise tax, paid by the fund manager, is imposed on the agreement of any fund manager of the sponsoring organization to the making of the distribution,

[1] For this purpose, a disqualified person is defined under section 4958(f) as a person who was, at any time during the five-year period ending on the date of the transaction, in a position to exercise substantial influence over the affairs of the organization, and certain related persons, with special rules for DAFs and section 509(a)(3) organizations.

[2] Section 170(c)(2)(B) defines charitable contributions to include contributions to certain organizations for the following purposes: religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of the organization's activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals.

knowing that it would confer a prohibited benefit. Section 4967(b) provides that, with respect to any distribution, no tax can be imposed under section 4967 if a tax has been imposed under section 4958.

III. Administrative Guidance

In December 2006, the Treasury Department and the IRS issued Notice 2006–109, 2006–2 C.B. 1121, to provide interim guidance on certain requirements enacted by the PPA, including those that affect DAFs.[3] Notice 2006–109 also requested comments regarding the notice and suggestions for future guidance.

In February 2007, the Treasury Department and the IRS issued Notice 2007–21, 2007–1 C.B. 611, requesting comments in connection with a study conducted by the Treasury Department and the IRS on the organization and operation of DAFs and supporting organizations, as required by section 1226 of the PPA.

In December 2017, the Treasury Department and the IRS issued Notice 2017–73, 2017–51 I.R.B. 562, describing approaches being considered to address certain issues regarding DAFs and requesting comments on those approaches. In particular, Notice 2017–73 stated, among other things, that the Treasury Department and the IRS are considering developing proposed regulations under section 4967 that would, if finalized, provide that (1) certain distributions from a DAF that pay for the purchase of tickets that enable a donor, donor-advisor, or related person under section 4958(f)(7) to attend or participate in a charity-sponsored event result in a more than incidental benefit to such person under section 4967, and (2) certain distributions from a DAF that the distributee charity treats as fulfilling a pledge made by a donor, donor-advisor, or related person, do not result in a more than incidental benefit under section 4967 if certain requirements are met.

In response to these three notices, the Treasury Department and the IRS received 118 comments, 74 of which concerned DAFs and taxable distributions.[4] After consideration of the comments received, the Treasury Department and the IRS are proposing these regulations regarding the excise taxes payable by sponsoring organizations of DAFs and fund managers on taxable distributions under section 4966. The major areas of comment relating to section 4966 are discussed in the Explanation of Provisions.

Explanation of Provisions

1. Definition of Donor Advised Fund

In accordance with section 4966(d)(2)(A), the proposed regulations would define a DAF generally as a fund or account (1) that is separately identified by reference to contributions of a donor or donors, (2) that is owned and controlled by a sponsoring organization, and (3) with respect to which at least one donor or donor-advisor has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in such fund or account by reason of the donor's status as a donor. Unless otherwise excepted, a fund or account that meets all three prongs of the definition would be a DAF.

A sponsoring organization is proposed to be defined in accordance with section 4966(d)(1) as any organization that (1) is described in section 170(c) (other than a governmental unit described in section 170(c)(1)), without the requirement under section 170(c)(2)(A) that it be created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States; (2) is not a private foundation; and (3) maintains one or more DAFs.

A. Separate Identification by Reference to Contributions of a Donor or Donors

Section 4966(d)(2)(A)(i) states that a DAF must be separately identified by reference to contributions of a donor or donors. In general, the proposed regulations would provide that a fund or account is separately identified by reference to contributions of a donor or donors if the sponsoring organization maintains a formal record of contributions to the fund or account relating to a donor or donors. A formal record exists regardless of whether the sponsoring organization commingles the assets attributed to the fund or account with other assets of the sponsoring organization, as long as the sponsoring organization tracks contributions of a donor or donors to the fund or account. A contribution would be defined as any gift, bequest, or similar payment or transfer, whether in cash or in-kind, to or for the use of a sponsoring organization.

If the sponsoring organization does not maintain a formal record of contributions to a fund or account, then whether a fund or account is separately identified would be based on all the facts and circumstances.

The proposed regulations would provide that facts and circumstances that are relevant in determining that a fund or account is separately identified by reference to contributions of a donor or donors include: (1) the fund or account balance reflects items such as contributions, dividends, interest, distributions, administrative expenses, and gains and losses (realized or unrealized); (2) the fund or account is named after one or more donors, donor-advisors, or related persons (as defined by proposed § 53.4966–1(j)); [5] (3) the sponsoring organization refers to the fund or account as a DAF; (4) the sponsoring organization has an agreement or understanding with one or more donors or donor-advisors that such fund or account is a DAF; (5) one or more donors or donor-advisors regularly receive a fund or account statement from the sponsoring organization; and (6) the sponsoring organization generally solicits advice from the donor(s) or donor-advisor(s) before making distributions from the fund or account. The Treasury Department and the IRS request comments on these and any additional factors that would be relevant in determining whether a fund or account is separately identified by reference to contributions of a donor or donors.

Several commenters asked that funds or accounts funded by certain types of organizations, such as public charities, private foundations, or governmental entities, be excluded from the definition of a DAF. The proposed regulations define a donor generally as any person described in section 7701(a)(1) that

[3] For example, section 5.01 of Notice 2006–109 excludes from the definition of a DAF an employer-sponsored disaster relief fund that meets certain requirements. To be excluded, the fund must: (1) serve a single identified charitable purpose, which is to provide relief from one or more qualified disasters within the meaning of section 139(c)(1), (2), or (3); (2) serve a large or indefinite class, *i.e.,* a charitable class; (3) select recipients of grants based on objective determinations of need; (4) select recipients of grants using either an independent selection committee or adequate substitute procedures to ensure that any benefit to the employer is incidental and tenuous; (5) make no payment from the fund to or for the benefit of any director, officer, or trustee of the sponsoring organization of the fund or for the benefit of any member of the fund's selection committee; and (6) maintain adequate records that demonstrate the recipients' needs for the disaster relief assistance.

[4] The Treasury Department and the IRS anticipate that the other comments will be considered in the development of future guidance under other Code sections.

[5] Section 53.4966–1(j) of the proposed regulations defines ''related person,'' by reference to section 4958(f)(7)(B) and (C), as any family member (as defined in section 4958(f)(4)) or any 35-percent controlled entity (as defined in section 4958(f)(3) with appropriate substituted language).

contributes to a fund or account of a sponsoring organization. However, the proposed regulations would explicitly exclude from the definition of donor (1) any public charity described in section 509(a)(1), (2), or (3) (other than a disqualified supporting organization) and (2) any governmental unit described in section 170(c)(1). A fund or account that is separately identified by reference to contributions solely from either of these types of entities would not be treated as separately identified by reference to contributions from a donor and thus would not be a DAF.[6] Because private foundations and disqualified supporting organizations could use a DAF to circumvent the payout and other requirements that are applicable to those organizations, the proposed regulations would not exclude private foundations or disqualified supporting organizations from the definition of donor.

B. Advisory Privileges

Under section 4966(d)(2)(A)(iii), for a fund or account to constitute a DAF, (1) at least one donor or donor-advisor must have, or reasonably expect to have, advisory privileges with respect to the distribution or investment of amounts held in such fund or account, and (2) such advisory privileges must arise by reason of (in other words, because of) the donor's status as a donor. The proposed regulations generally would provide that the existence of such advisory privileges depends on the facts and circumstances, including the conduct (and any agreement or understanding) of both the donor(s) or donor-advisor(s) and the sponsoring organization. A donor (or donor-advisor) may have, or reasonably expect to have, advisory privileges even in the absence of the actual provision of advice. Advisory privileges would include those arising from service on an advisory committee. The proposed regulations also would presume that advisory privileges of a donor or donor-advisor arise by reason of the donor's status as a donor, except where specifically provided otherwise.

Commenters recommended that, for advisory privileges to exist, advice must include a specified amount and a named recipient. Commenters also suggested that, in the absence of written evidence, advisory privileges should not be inferred unless there are at least three separate successive occasions where the sponsoring organization accepts the donor's advice. Commenters further requested that a sponsoring organization's proposal to distribute a certain amount to a certain distributee, subject to the donor's approval, be viewed as the donor's exercise of the advisory privilege only if the donor approves the proposal.

The Treasury Department and the IRS believe that the commenters' recommendations would define advisory privileges too narrowly. Instead, the proposed regulations would provide that the presence of any of the following four facts is sufficient to establish that a donor or donor-advisor has advisory privileges by reason of the donor's status as a donor, regardless of whether they are exercised: (1) the sponsoring organization allows a donor or donor-advisor to provide nonbinding recommendations regarding distributions from, or regarding the investment of assets held in, a fund or account; (2) a written agreement states that a donor or donor-advisor has advisory privileges; (3) a written document or any marketing material of the sponsoring organization made available to a donor or donor-advisor indicates that a donor or donor-advisor may provide advice to the sponsoring organization regarding the distribution or investment of amounts held by a sponsoring organization (for example, a pre-approved list of investment options or distributees that the sponsoring organization provides to a donor or donor-advisor); or (4) the sponsoring organization generally solicits advice from a donor or donor-advisor regarding the distribution or investment of amounts held in a fund or account.

However, the proposed regulations would also provide four special rules relating to advisory privileges. First, if at least one donor or donor-advisor has, or reasonably expects to have, advisory privileges with respect to a fund or account or any portion of a fund or account, then advisory privileges by reason of the donor's status as a donor exist with respect to that fund or account even if there are multiple donors to the fund or account.

Second, there would be special rules for advisory privileges arising from service on an advisory committee, as discussed in section 1.D of this Explanation of Provisions of this preamble.

Third, advice provided solely in a person's capacity as an officer, director, employee (or in a similar capacity) of a sponsoring organization would not by itself give rise to advisory privileges by reason of a donor's status as a donor. However, if, by reason of the person's contribution to a fund or account, an officer, director, or employee of the sponsoring organization is allowed to advise on how to distribute or invest amounts in the fund or account, the person would be considered to have advisory privileges by reason of the donor's status as a donor with respect to that fund or account.

Lastly, unless the special rule for officers, directors, and employees of a sponsoring organization applies, if a donor to a fund or account is the sole person with advisory privileges with respect to a fund or account, the advisory privileges would be deemed to be by reason of the donor's status as a donor. This bright-line rule would provide clarity and enhance administrability. The Treasury Department and the IRS request comments regarding whether there are additional circumstances in which application of the bright-line rule is not warranted.

Commenters asked that guidance clarify that advisory privileges do not include certain legally enforceable rights of the donor with respect to a contribution. If a restriction is placed on a gift at the time the gift is made and there is no provision for subsequent discretion regarding the restriction, then the restriction should not give rise to advisory privileges. For example, a donor's mere earmarking of a donation (at the time of donation) for a particular fund or program of the recipient charity, without more, does not create an advisory privilege. Whether the terms of a gift agreement create a DAF depends on the restrictions set forth in the agreement. The Treasury Department and the IRS request comments on the circumstances in which a gift agreement or advisory rights retained by a donor could create a DAF.

C. Donor-Advisor

Consistent with section 4966(d)(2)(A)(iii), the proposed regulations would define donor-advisor as a person appointed or designated by a donor to have advisory privileges regarding the distribution or investment of assets held in a fund or account of a sponsoring organization. If a donor-advisor delegates any of the donor-advisor's advisory privileges to another person, that person also would be a donor-advisor. No particular form of appointment or designation would be necessary under the proposed regulations.

A donor-advisor generally would include a person suggested or recommended by a donor to have advisory privileges if the sponsoring organization provides such privileges.

[6] Because public charities and governmental units are not treated as donors, it also follows that if only they have advisory privileges with respect to a fund, the fund would not be a DAF even if there are other donors. *See* § 53.4966–3(e)(4) (*Example 4*) of these proposed regulations.

However, this rule would not apply if (1) the donor recommends an investment advisor who is properly viewed as providing services to the sponsoring organization as a whole, rather than providing services to the DAF, as described in this section 1.C of this Explanation of Provisions of this preamble, or (2) the donor recommends a person to serve on a committee of the sponsoring organization that advises as to distributions or investments of amounts in a fund or account if the recommendation is based on objective criteria related to the expertise of the member in the particular field of interest or purpose of the fund or account, the committee consists of three or more individuals and a majority of the committee is not recommended by the donor or donor-advisor, and the recommended person is not a related person with respect to the recommending donor or donor-advisor, as discussed in section 1.D of this Explanation of Provisions of this preamble.

The proposed regulations include three special rules with respect to donor-advisors. First, a person (other than a person or governmental unit excepted from status as a donor) who establishes a fund or account and advises as to the distribution or investment of amounts in that fund or account would be treated as a donor-advisor with respect to that fund or account, regardless of whether the person contributes to the fund or account. For example, if a person establishes a memorial or fundraising fund to which the person does not contribute, but does provide advice regarding distributions from the fund, the person would be considered a donor-advisor. The donors to the fund have implicitly designated the advisor to have advisory privileges.

Second, an investment advisor described in section 4958(f)(8)(B) [7] that manages the investment of, or provides investment advice with respect to, both assets maintained in a DAF and the personal assets of a donor to that DAF (personal investment advisor) would be a donor-advisor with respect to the DAF while serving in that dual capacity, regardless of whether the donor appointed, designated, or recommended the personal investment advisor. However, recognizing that a personal investment advisor may more generally advise the sponsoring organization, the proposed regulations would provide that a personal investment advisor will not be considered a donor-advisor if the personal investment advisor is properly viewed as providing services to the sponsoring organization as a whole, rather than providing services to the DAF. For example, if an investment advisor contracts with a sponsoring organization to provide services to all of its 1,000 DAFs, and the sponsoring organization reasonably charges the investment advisor's fees uniformly to all of those DAFs, the investment advisor would properly be viewed as providing services to the sponsoring organization as a whole.

The Treasury Department and the IRS request comments on additional circumstances that would indicate that a personal investment advisor is properly viewed as providing services to the sponsoring organization as a whole, rather than providing services to the DAF, as well as additional circumstances in which a personal investment advisor should not be considered a donor-advisor.

One commenter suggested that an investment advisor recommended by a donor to the sponsoring organization should not be treated as a donor-advisor if the investment advisor is regulated by State and Federal agencies, because agency oversight makes it unlikely that the investment advisor would manipulate the assets of the DAF for personal gain. The commenter stated that an investment advisor that was considered a donor-advisor could not receive compensation from a DAF because that would be an excess benefit transaction under section 4958(c)(2).

While the commenter believes that it is unlikely that a regulated investment advisor would manipulate the assets of the DAF for personal gain, the Treasury Department and the IRS view the close relationship between a donor and his or her personal investment advisor as giving the donor influence over investment decisions with respect to assets held in the DAF comparable to that of a donor-advisor. Moreover, the Treasury Department and the IRS are concerned about potential conflicts of interest. Specifically, sponsoring organizations may allow the appointment of a donor's personal investment advisor as an advisor regarding the investment of DAF funds in order to encourage investment advisors to promote their clients' giving through a DAF, rather than directly to a public charity (other than the sponsoring organization). In fact, a counterincentive may be created for both donors and their personal investment advisors to not advise distributions out of their DAFs to operating charities. Another significant concern is that a more than incidental benefit may occur if the investment advisor charges the donor a reduced fee for managing the donor's personal assets because the investment advisor also manages the assets the donor contributed to the DAF.

The Treasury Department and the IRS agree that a personal investment advisor that is considered a donor-advisor would be subject to the excess benefit transaction rules of section 4958(c)(2) if he or she received a grant, loan, compensation, or similar payment from the DAF.

Third, advisory committee members recommended by a donor and appointed by the sponsoring organization would be donor-advisors, except as discussed in section 1.D of this Explanation of Provisions of this preamble.

D. Advisory Committees

The Treasury Department and the IRS generally would regard service on a committee of a sponsoring organization that advises as to distributions from or investments of assets of a fund or account as a form of advisory privilege with respect to that fund or account in determining whether the fund is a DAF, even though the sponsoring organization controls the selection of committee members consistent with its ownership and control of the fund or account in accordance with section 4966(d)(2)(A)(ii). Recognizing that a fund or account, including a multiple-donor fund, as discussed in section 1.E of this Explanation of Provisions of this preamble, may sometimes be advised by an advisory committee that includes one or more donors, donor-advisors, related persons, or persons recommended by donors or donor-advisors to serve on the advisory committee, the proposed regulations would provide two special rules relating to advisory privileges arising from service on an advisory committee. Under these two special rules, a fund or account could be advised by a committee that may include one or more donors, donor-advisors, related persons, or persons recommended by donors or donor-advisors, without being a DAF.

First, when a sponsoring organization appoints a donor, donor-advisor, or related person to serve on an advisory committee, the donor, donor-advisor, or related person generally would have advisory privileges by reason of the donor's status as a donor. However, the proposed regulations would provide that a sponsoring organization's appointment of a donor, donor-advisor,

[7] Section 4958(f)(8)(B) defines investment advisor, with respect to any sponsoring organization, as any person (other than an employee of such organization) compensated by the organization for managing the investment of, or providing investment advice with respect to, assets maintained in DAFs owned by the organization.

or related person to be on a committee that advises as to distributions or investments of amounts in the fund or account will not be deemed to result in advisory privileges by reason of the donor's status as a donor if (1) the appointment is based on objective criteria related to the expertise of the appointee in the particular field of interest or purpose of the fund or account; (2) the committee consists of three or more individuals, not more than one-third of whom are related persons with respect to any of the others; and (3) the appointee is not a significant contributor to the fund or account, taking into account contributions by related persons with respect to the appointee,[8] at the time of appointment. If an appointee or related person is not a significant contributor to a fund or account at the time of appointment but becomes one shortly afterwards, the IRS may find that the person has advisory privileges based on the facts and circumstances. The Treasury Department and the IRS request comments on what constitutes a significant contributor for purposes of this exception.

Second, when a donor (or donor-advisor) recommends someone to serve on an advisory committee advising as to the distribution or investment of funds in the fund or account, that person would be considered a donor-advisor if the sponsoring organization appoints the recommended person to serve on the advisory committee. However, the proposed regulations would allow a donor (or donor-advisor) to recommend a person to serve as a member of an advisory committee of the sponsoring organization for the fund or account and not be considered to be a donor-advisor if (1) the recommendation is based on objective criteria related to the expertise of the member in the particular field of interest or purpose of the fund or account; (2) the committee consists of three or more individuals, and a majority of the committee is not recommended by the donor or donor-advisor; and (3) the recommended person is not a related person with respect to the recommending donor or donor-advisor.

The Treasury Department and the IRS request comments on the proposed advisory committee exceptions, including additional circumstances in which advisory privileges arising from advisory committees should not result in the creation of a DAF.

E. Multiple-Donor Funds or Accounts

Several commenters suggested excepting a fund or account to which multiple unrelated donors contributed from the definition of DAF. Commenters expressed concern that failing to provide an exception would affect charitable giving practices encouraged by alumni organizations or professional associations, as well as discourage the use of funds or accounts to incubate potential public charities. One commenter suggested that imposing various conditions, including that the fund or account have at least three unrelated donors; that the donations be aggregated into a single consolidated account balance; that no written or oral understanding exists that donors have advisory privileges corresponding to the amounts they donated to the fund or account; and that no single donor or group of related donors gave more than 35 percent of all donations, would prevent the vast majority of potential abuses of multiple-donor fund status while allowing most giving circles and giving pools maintained at public charities to avoid DAF status. Other commenters suggested that, without various safeguards, an exception for multiple-donor funds or accounts may permit abuses.

The Treasury Department and the IRS anticipate that, in most circumstances, a multiple-donor fund or account would be separately identified by reference to contributions of a specific donor or donors. However, even if separately identified, a multiple-donor fund or account would not be a DAF if no donor or donor-advisor has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in the fund or account by reason of the donor's status as a donor. Furthermore, section 4966(d)(2)(B) and the proposed regulations include several special rules that may permit a multiple-donor fund or account to be excepted from definition as a DAF even if it doesn't meet one of the exceptions discussed in section 2 of this Explanation of Provisions of this preamble (such as funds or accounts making distributions only to a single identified organization or funds or accounts making certain grants to individuals for travel, study, or other similar purposes).

First, as indicated in section 1.A. of this Explanation of Provisions of this preamble, the proposed regulations would exclude certain entities from the definition of ''donor.'' Specifically, the proposed regulations would define donor to exclude any public charity described in section 509(a)(1), (2), or (3) (other than a disqualified supporting organization) and (2) any governmental unit described in section 170(c)(1). If a fund or account has multiple donors but only a public charity or governmental unit has the right to exercise advisory privileges, then no donor, as defined by the proposed regulations, would have advisory privileges with respect to the distribution or investment of amounts held in the fund or account by reason of the donor's status as a donor. Thus, the fund or account would not be a DAF.

Second, as discussed in section 1.D of this Explanation of Provisions of this preamble, the proposed regulations would provide two special rules relating to advisory privileges arising from service on an advisory committee. These two rules would allow certain multiple-donor funds or accounts to be advised by a committee that may include one or more donors, donor-advisors, related persons, or persons recommended by donors or donor-advisors, without being a DAF.

The Treasury Department and the IRS request comments on whether and in what circumstances additional types of exceptions are warranted to allow multiple-donor funds or accounts to be excluded from the definition of DAF. The Treasury Department and the IRS are particularly interested in comments addressing how any exception for multiple-donor funds or accounts can be crafted to prevent circumvention of the provisions of section 4966 while still being administrable for both sponsoring organizations and the IRS.

2. Exceptions to the Definition of Donor Advised Fund

Consistent with section 4966(d)(2)(B), the proposed regulations generally would provide that a DAF does not include any fund or account that makes (1) distributions only to a single identified organization, or (2) certain grants to individuals for travel, study, or other similar purposes. These exceptions are discussed in sections 2.A. and 2.B. of this Explanation of Provisions of this preamble.

In addition, under section 4966(d)(2)(C), the Secretary has discretionary authority to exempt a fund or account from the definition of DAF if the fund or account is advised by a committee not directly or indirectly controlled by the donor or donor-advisor (and any related parties [9]) or if

[8] For example, if a donor is a significant contributor, a family member who is appointed to the committee also is considered a significant contributor, regardless of whether the family member actually contributed to the fund.

[9] Section 4966 does not define the term ''related parties'' and otherwise uses the term ''persons.'' Furthermore, another provision applicable to donor advised funds, section 4958, defines certain ''persons'' in connection with a DAF for purposes

Continued

the fund or account benefits a single identified charitable purpose. The proposed regulations would provide two exceptions to the definition of DAF under this discretionary authority: (1) an exception for disaster relief funds consistent with the exception originally set forth in Notice 2006–109, with some modifications, and (2) an exception for certain scholarship funds whose committee is nominated by a section 501(c)(4) organization with a broad-based membership.

The Treasury Department and the IRS request comments on whether other funds should be excepted from the definition of DAF using the authority under section 4966(d)(2)(C) and what, if any, restrictions should apply to ensure that the intent of section 4966 is achieved.

A. Single Identified Organization Exception

Section 4966(d)(2)(B)(i) states that a fund or account that makes distributions only to a single identified organization or governmental entity is not a DAF. Several commenters suggested that a single identified organization should include an organization that is not described in section 501(c)(3), including a for-profit business and an organization described in section 501(c)(4), so long as the distributions to the organization or business are made for a charitable purpose described in section 170(c)(2)(B). The proposed regulations would provide that a fund or account will not be considered a DAF if, along with meeting the other requirements discussed in this section 2.A, it is established to make (and actually does make) distributions solely to a single identified organization that is either: (1) an organization described in sections 170(c)(2) and 509(a)(1), (2), or (3) (other than a disqualified supporting organization), or (2) a governmental entity described in section 170(c)(1) if the distribution is made exclusively for public purposes. The Treasury Department and the IRS are concerned that expanding the exception to include other types of organizations may allow circumvention of other tax provisions, such as the private foundation and charitable contribution deduction rules. Thus, the exception would not apply if the single identified organization is a private foundation, disqualified supporting organization, foreign organization, or non-charitable organization.

If the single identified organization loses its exempt status or ceases operating, the proposed regulations would provide rules similar to the rules found in § 1.509(a)–4(d)(4)(i)(*a*) (allowing a supporting organization to substitute a new supported organization). A sponsoring organization would be permitted to substitute another single identified organization if the substitution is conditioned upon the occurrence of a loss of exemption, substantial failure or abandonment of operations, or a dissolution or reorganization that results in the named single identified organization ceasing to exist, and the event is beyond the direct or indirect control of donor(s), donor-advisor(s), or related persons.

Commenters suggested that the exception for a fund or account that makes distributions to a single identified organization should encompass distributions made to support that organization's activities and that a fund restricted to a specific charitable project should be considered a fund or account that makes distributions to a single identified organization. Commenters suggested that a fund should therefore be able to support the programs or activities of a single identified organization by making distributions to individuals directly (as long as the distributions are limited to those within the charitable class served by that single identified organization), or by receiving, holding and disbursing funds for a specific project or program conducted by the single identified organization, including making distributions to third parties for goods, services, and incidental grant-making limited to a particular project or program. For example, commenters suggested that the exception should apply to a scholarship fund that a donor establishes at a university and that provides scholarships and other grants solely to students at that university whom the donor has a role in selecting.

Under the proposed regulations, the sponsoring organization would be permitted to make distributions to the single identified organization for the single identified organization's activities (and only activities other than administering DAFs or grant-making) and, thus, to make distributions to fund a specific charitable project (other than administering DAFs or grant making) of the single identified organization. However, the sponsoring organization could not make distributions directly to third parties on behalf of the single identified organization, such as by making distributions to third parties for goods, services, or incidental grant-making for a particular project or program, because the statute requires that the fund or account make distributions only to the single identified organization.

Because a fund or account that falls within the single identified organization exception is not subject to the rules applicable to DAFs, the proposed regulations would provide that distributions to the single identified organization may not be used to administer DAFs or to make grants. In addition, the proposed regulations would provide that a fund or account will not be treated as making distributions only to a single identified organization if (1) a donor, donor-advisor, or related person has or reasonably expects to have, the ability to advise regarding distributions from the single identified organization to other individuals or entities, or (2) a distribution from the fund or account will provide, directly or indirectly, a more than incidental benefit (within the meaning of section 4967) to a donor, donor-advisor, or related person with respect to the fund or account. Thus, for example, if a donor establishes a fund to make distributions only to a single public charity, and the donor is on the Board of the public charity, then the fund would not be able to meet this exception because the donor has the ability to advise some or all of the distributions from the public charity to other entities.

Recognizing that a sponsoring organization may lack direct knowledge regarding the activities of the donor, donor-advisor, or related person with regard to the single identified organization, however, the proposed regulations would allow a sponsoring organization to rely on a certification from the donor that (1) no donor, donor-advisor, or related person has or reasonably expects to have, the ability to advise regarding distributions from the single identified organization to other individuals or entities, and (2) no distribution from the fund or account will provide, directly or indirectly, a more than incidental benefit (within the meaning of section 4967) to a donor, donor-advisor, or related person with respect to the fund or account, as long as the sponsoring organization lacks knowledge to the contrary.

The Treasury Department and the IRS request comments on whether additional guidance is needed on situations in which a fund or account is established at a public charity and the written agreement establishing the fund or account provides that the contributed

of excess benefit transactions. For consistency and administrability across the provisions applicable to DAFs, the proposed regulations use the term ''related persons'' rather than ''related parties'' and define ''related persons'' as those persons described in section 4958(f)(7)(B) and (C).

amounts can only be used to support programs within that public charity, but the donor retains advisory privileges with respect to the public charity's use or investment of some or all of the funds. Section 4966(c)(2)(B) excepts from the definition of ''taxable distribution'' any distribution from a DAF to the sponsoring organization of the DAF; accordingly, any fund or account established at a public charity that is used to support operating programs of the public charity (rather than to make distributions to third parties) would not have any taxable distributions, if the fund or account were a DAF. For example, a donor who established a fund or account at a university could advise that contributions previously made to the fund or account be distributed to the university's scholarship program. However, if the donor were to want to have a role in advising on the selection of scholarship recipients then, to avoid a taxable distribution, the donor's involvement would need to meet the exception provided in section 4966(d)(2)(B)(ii) (discussed in section 2.B. of this Explanation of Provisions of this preamble).

B. Statutory Scholarship Exception

Under section 4966(d)(2)(B)(ii) the term ''donor advised fund'' does not include a fund or account that exclusively makes grants for travel, study, or other similar purposes, provided certain requirements are met. Consistent with section 4966(d)(2)(B)(ii), the proposed regulations would provide that, under this exception from the definition of a DAF, a donor or donor-advisor may provide advice as to which individuals receive grants for travel, study, or other similar purposes from a fund or account if (1) the person provides the advice exclusively in the person's capacity as a member of the selection committee; (2) all the members of the selection committee are appointed by the sponsoring organization; (3) no combination of donor(s), donor-advisor(s), or related persons controls, directly or indirectly, the committee; and (4) all grants from the fund or account are awarded on an objective and nondiscriminatory basis pursuant to a written procedure approved in advance by the board of directors of the sponsoring organization and the procedure is designed to ensure that all grants meet the requirements of paragraph (1), (2), or (3) of section 4945(g) and the regulations thereunder. The requirements in the regulations under section 4945(g) include the requirements that the group from which grantees are selected will ordinarily be sufficiently large to constitute a charitable class; that the members of the selection committee will not be in a position to derive a private benefit if certain potential grantees are selected over others; and that the sponsoring organization will maintain adequate records regarding the identification and selection of individual grantees. If a fund or account satisfies the requirements of the exception, a sponsoring organization may award a scholarship from the fund or account to an individual without subjecting the sponsoring organization or its fund managers to excise taxes under section 4966.

The proposed regulations would provide that whether a combination of donor(s), donor-advisor(s), or related persons controls, directly or indirectly, the selection committee is determined by looking to the substance, rather than the form, of any arrangement. Direct control would exist if donor(s), donor-advisor(s), or related persons, either alone or together, (1) can require the committee to take or refrain from taking any action; (2) control 50 percent or more of the total voting power of the committee; or (3) have the right to exercise veto power over the committee's decisions. Whether indirect control exists is determined by the facts and circumstances, including the nature of any relationships among members of the selection committee and with any donor, donor-advisor, or related person. For example, a committee would be ''indirectly controlled'' by a combination of donor(s), donor-advisor(s), or related persons if a majority of the selection committee is currently engaged by the donor, donor-advisor, or any related person in any employment or fiduciary capacity, whether as an employee or independent contractor, or recommended by a donor or donor-advisor and appointed to the selection committee based on other than objective criteria regarding the person's expertise, or a combination thereof.

One commenter recommended that a sponsoring organization be permitted to set reasonable uniform procedures for appointing members to selection committees, taking into account the size of the sponsoring organization, the number of grants from the scholarship fund, and other relevant facts and circumstances, rather than requiring action by the entire board. The proposed regulations would provide that, in appointing the members of the selection committee, a sponsoring organization may act through its board of directors, trustees, or other governing body, a committee appointed by its governing body, or an appropriate officer of the sponsoring organization.

The Treasury Department and the IRS are concerned that some employers may seek to use this statutory scholarship exception to grant employer-related scholarships in a manner that would otherwise not be considered a scholarship or fellowship grant subject to the provisions of section 117(a), or that would otherwise be a taxable expenditure under section 4945, by having a sponsoring organization administer their scholarship programs. *See, e.g.,* Rev. Proc. 76–47, 1976–2 C.B. 670, and Rev. Proc. 80–39, 1980–2 C.B. 772. The Treasury Department and the IRS request comments on whether additional guidance is needed to prevent avoidance of the employer-related scholarship rules or to address any potential private benefit arising from employer-related scholarship programs.

C. Exception for Certain Scholarship Funds Established by Certain Section 501(c)(4) Organizations

Several commenters asked for guidance relating to a scholarship fund of a sponsoring organization that receives contributions from a tax-exempt membership organization, such as a section 501(c)(4) social welfare organization. The commenters stated that, for example, Rotary Club scholarship funds are often established at community foundations and that these scholarship funds do not fit within the statutory scholarship committee exception provided by section 4966(d)(2)(B)(ii) because members of the section 501(c)(4) organization who may be donors to the fund comprise a majority of the scholarship selection committee. These commenters asked that the proposed regulations provide an additional exception allowing members of a section 501(c)(4) organization who are otherwise unrelated to one another to control the scholarship selection committee, particularly since it is difficult to find non-members willing to serve on the committee. The commenters noted that requiring Rotary Clubs to form a section 501(c)(3) organization to make distributions for Rotary scholarships would be an inefficient use of charitable resources and that sponsoring organizations can provide expertise on objective and charitable standards for selecting scholarship recipients.

The proposed regulations would provide an exception to the definition of DAF for a fund or account established by a broad-based membership organization described in section

501(c)(4) if six conditions are met. The conditions would substantially mirror the conditions in the statutory scholarship exception, except that donors may control the committee.

First, the fund or account's single identified charitable purpose must be to make grants to individuals for scholarships described in section 4945(g)(1).

Second, the selection of recipients of scholarships from the fund or account must be made by a selection committee the members of which are nominated by the section 501(c)(4) organization and approved in writing by the sponsoring organization. This requirement would allow the section 501(c)(4) organization to have input on the members of the selection committee, but would leave the final decision to the sponsoring organization that owns and controls the assets of the fund or account.

Third, the fund or account must serve a charitable class.

Fourth, like the statutory scholarship exception, recipients of grants from the fund or account must be selected on an objective and nondiscriminatory basis, pursuant to a written procedure, approved in advance by the sponsoring organization's board of directors, that is designed to ensure that all the grants meet the requirements of section 4945(g)(1) and the regulations under section 4945 (other than advance approval by the IRS).

Fifth, no distribution may be made from the fund or account to (1) any director, officer, or trustee of the sponsoring organization of the fund, (2) any member of the fund's selection committee, (3) any member, honorary member, or employee of the section 501(c)(4) organization, or (4) any person related to anyone described in (1), (2), or (3).

Finally, the fund or account must maintain adequate records that demonstrate the recipients were selected on an objective and nondiscriminatory basis.

The Treasury Department and the IRS are concerned that not requiring the section 501(c)(4) organization to have a broad-based membership could allow a small group of persons to set up a section 501(c)(4) organization and use a fund or account at a sponsoring organization to grant scholarships to their selected recipients with tax-deductible contributions, circumventing the DAF rules. Given this concern, the Treasury Department and the IRS request comments on how to identify a broad-based membership organization described in section 501(c)(4), including factors such as the organization's number of members, criteria for selecting members, membership rights, and geographic coverage.

The Treasury Department and the IRS also request comments on whether and under what circumstances other organizations, such as section 501(c)(5) and 501(c)(6) organizations, use similar types of committee-advised scholarship funds and whether the exception should be extended to those organizations, recognizing that section 501(c)(4) organizations are formed to promote social welfare whereas section 501(c)(5) and section 501(c)(6) organizations are formed to further different purposes.

D. Disaster Relief Exception

Several commenters asked that the proposed regulations provide, consistent with Notice 2006–109, that an employer-sponsored disaster relief fund is not a DAF. Commenters also recommended that the exception be extended to disaster relief funds outside of the employment context and that the exception be extended to emergency hardship situations outside of the disaster relief context.

Since the determination of the existence of a qualified disaster under section 139 is not controlled by the sponsoring organization or the fund or account's advisory committee, the proposed regulations would exempt a non-employment based disaster relief fund. Thus, the proposed regulations would provide that both an employer-sponsored disaster relief fund and a disaster relief fund outside of the employment context are not DAFs, as long as the requirements of section 139 are met. In contrast, since the determination of the existence of an emergency hardship is controlled by the sponsoring organization or the fund or account's advisory committee, the proposed regulations would not extend the exception to emergency hardship funds.

To meet the disaster relief exception in the proposed regulations, six conditions must be met. The conditions substantially mirror the provisions in Notice 2006–109 (and the special rules generally for charitable assistance in qualified disasters) and the provisions of the statutory scholarship exception and the exception for certain scholarship funds established by section 501(c)(4) organizations.

First, the fund or account's single identified charitable purpose must be to provide relief from one or more qualified disasters within the meaning of section 139(c)(1), (2), or (3).

Second, the fund or account must serve a charitable class.

Third, recipients of grants from the fund or account must be made by a selection committee not controlled by donors, donor-advisors, or related persons and for which all the members are appointed by the sponsoring organization. Alternatively, if the fund or account gives preference or priority to employees (or their family members) of an employer to receive grants, the majority of the selection committee must consist of persons who are not in a position to exercise substantial influence over the affairs of the employer (or adequate substitute procedures exist to ensure that any benefit to the employer is incidental and tenuous).

Fourth, the selection committee must select grant recipients based on objective and nondiscriminatory determinations of need pursuant to a written procedure approved in advance by the board of directors of the sponsoring organization.

Fifth, no distribution from the fund or account may result in more than an incidental benefit to (1) any director, officer, or trustee of the sponsoring organization of the fund or account; (2) any member of the fund or account's selection committee; or (3) any person related to a director, officer, or trustee of the sponsoring organization or a member of the selection committee.

Lastly, the sponsoring organization must maintain records that (1) demonstrate the need of the recipients for the disaster relief assistance provided, and (2) satisfy the requirements of section 6033(b)(14).[10]

3. Taxable Distributions

Section 4966(c)(1) defines a taxable distribution as any distribution from a DAF to (1) any natural person, or (2) any other person unless the distribution is for a purpose specified in section 170(c)(2)(B) and the sponsoring organization exercises expenditure responsibility with respect to the distribution in accordance with section 4945(h).

Section 4966(c)(2) excepts from the term ''taxable distribution'' any distribution from a DAF to (1) any organization described in section 170(b)(1)(A) (other than a disqualified supporting organization), (2) the sponsoring organization of the DAF, or (3) any other DAF. The Treasury Department and the IRS expect that most distributions from DAFs are to organizations described in section 170(b)(1)(A) (but not to disqualified

[10] Section 6033(b)(14), added in 2008, requires every section 501(c)(3) organization required to file an annual information return to furnish annually such information as the Secretary may require with respect to disaster relief activities.

supporting organizations) and thus are not taxable distributions.

The proposed regulations incorporate the statutory definition of taxable distribution. In addition, the proposed regulations would set forth an anti-abuse rule providing that, if a series of distributions through intermediary distributees undertaken pursuant to a plan achieves a result that is inconsistent with the purposes of section 4966, the distributions are treated as a single distribution for purposes of section 4966. For example, if a donor advises a distribution, that the sponsoring organization subsequently makes, from a DAF to Charity X and the donor or the sponsoring organization arranges for Charity X to use the funds to make distributions to an individual recommended by the donor, the distribution would be a taxable distribution from the sponsoring organization to an individual.

Several commenters recommended that the term ''distribution'' be narrowly defined to include only a gratuitous transfer. These commenters requested that a purchase of goods or services by a sponsoring organization using funds from a DAF for charitable activity or fundraising would not be considered a distribution. One commenter asked that the term ''distribution'' be defined the same as the term ''grant'' in section 4945 and that it not include payments from a sponsoring organization using funds from a DAF to vendors for goods or services or employee compensation.

The proposed regulations do not adopt these suggestions and would construe the term ''distribution'' broadly. In particular, the proposed regulations would provide that the term ''distribution'' generally means any grant, payment, disbursement, or transfer, whether in cash or in kind, from a DAF. In addition, the proposed regulations would provide that any use of DAF assets that results in a more than incidental benefit to a donor, donor-advisor, or related person is a deemed distribution and thus generally would be a taxable distribution. The Treasury Department and the IRS note that distributions resulting in a more than incidental benefit to a donor, donor-advisor, or related person may also result in tax under section 4967. *See* Notice 2017–73, 2017–51 I.R.B. 562.

However, the proposed regulations would provide that (1) investments and (2) reasonable investment and grant-related fees generally are not distributions under this definition (unless they result in a more than incidental benefit as noted above).

Investments generally would not be treated as distributions under the proposed regulations because they typically merely reflect a change from one form of property to another. The Treasury Department and the IRS would consider investments for this purpose as including both debt and equity instruments held for the purpose of obtaining income or funds, including investments made partly for charitable purposes as described in Notice 2015–62, 2015–39 I.R.B. 411. However, an investment would not, for example, include a zero-interest loan, as there is no purpose of, or provision for, obtaining income or funds from the zero-interest loan. The Treasury Department and the IRS anticipate that a zero-interest loan would be a distribution under the proposed regulations and, unless made to a section 170(b)(1)(A) organization other than a disqualified supporting organization, would require expenditure responsibility by the sponsoring organization in order not to be a taxable distribution. The Treasury Department and the IRS request comments on how to further distinguish distributions from investments.

Reasonable investment and grant-related fees paid from DAF assets generally would not be considered distributions; however, an unreasonable grant-related or investment fee would be a deemed distribution and, thus, would be a taxable distribution. The Treasury Department and the IRS expect that whether a fee is reasonable would be determined by all the facts and circumstances. For example, an expense charged uniformly or ratably across all DAFs generally would be considered a reasonable fee and not a distribution. In addition, an expense charged solely to a particular DAF (such as an expense arising from an expenditure responsibility grant from the fund) may be reasonable, depending on the facts and circumstances. However, the proposed regulations would provide that an expense charged solely to a particular DAF that is paid, directly or indirectly, to a donor, donor-advisor, or related person with respect to the DAF, is a deemed distribution subject to sections 4966, 4958, and/or 4967.

A. Distributions to Section 170(b)(1)(A) Organizations

Section 4966(c)(2)(A) provides that a distribution to any organization described in section 170(b)(1)(A) (other than a disqualified supporting organization) is not a taxable distribution. Similar to existing guidance under § 53.4945–5(a)(4), the proposed regulations *would* provide several categories of organizations treated as described in section 170(b)(1)(A) for purposes of section 4966(c)(2)(A).

First, an organization would be considered an organization described in section 170(b)(1)(A) if it is described in both sections 170(b)(1)(A) and 170(c)(2) (other than a disqualified supporting organization), without the requirement under section 170(c)(2)(A) that it be created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States. Thus, for example, a taxable organization that operates a for-profit school would not be treated as described in section 170(b)(1)(A) because the organization would not be described in section 170(c)(2).

Second, an organization that is a governmental unit described in section 170(b)(1)(A)(v) and 170(c)(1) (or an agency or instrumentality thereof, including an organization described in section 511(a)(2)(B)) would be considered an organization described in section 170(b)(1)(A), as long as the distribution to it is made for exclusively public purposes.

Third, a foreign government (or an agency or instrumentality thereof), or an international organization designated as such by Executive Order under 22 U.S.C. 288 would be treated as an organization described in section 170(b)(1)(A), as long as the distribution to it is made exclusively for purposes described in section 170(c)(2)(B).

One commenter asked that guidance expressly provide that DAFs may make grants to foreign organizations based on the same equivalency determinations that private foundations use for purposes of determining whether a foreign organization is the equivalent of a domestic public charity. The proposed regulations would adopt this suggestion. Consistent with Rev. Proc. 2017–53, 2017–40 I.R.B. 263 (providing guidelines for equivalency determinations by, among others, sponsoring organizations of DAFs), the proposed regulations would provide that, prior to the distribution, a sponsoring organization may make a good faith determination that a foreign organization is described in sections 501(c)(3) and 170(b)(1)(A) (other than a disqualified supporting organization) using procedures similar to those procedures permitted for private foundation grantors under § 53.4945–5(a)(5). Those procedures provide that a determination will ordinarily be a good faith determination if it is based on current written advice from a qualified practitioner and the organization reasonably relied in good faith on the written advice. If a sponsoring organization makes a good faith determination that a foreign organization is described in sections 501(c)(3) and 170(b)(1)(A) (other than a disqualified supporting organization), the sponsoring organization would not need to exercise expenditure responsibility with respect to a distribution to that organization.

B. Disqualified Supporting Organizations

Section 4966(d)(4)(A)(i) defines any Type III non-functionally integrated supporting organization as a disqualified supporting organization with respect to any distribution.[11] Section 4966(d)(4)(A)(ii)(I) disqualifies any other type of supporting organization if the donor or any donor-advisor (and any related parties) [12] directly or indirectly controls a supported organization (as defined in section 509(f)(3)) of the supporting organization. The Treasury Department and the IRS request comments on whether other entities should be included in the definition of disqualified supporting organization, using the authority under section 4966(d)(4)(A)(ii)(II) to designate other supporting organizations as disqualified, because a distribution to such organization is inappropriate if expenditure responsibility is not exercised to ensure the distribution is for a purpose specified in section 170(c)(2)(B).

C. Distributions to Non-Section 170(b)(1)(A) Organizations or to Disqualified Supporting Organizations

Under section 4966(c)(1)(B), a distribution to any entity not described in section 170(b)(1)(A), or to a disqualified supporting organization, will be a taxable distribution unless (1) the distribution is for a purpose specified in section 170(c)(2)(B) (generally, is for a charitable purpose), and (2) the sponsoring organization exercises expenditure responsibility with respect to the distribution in accordance with section 4945(h).

i. Non-Charitable Purposes

The proposed regulations would provide that purposes described in section 170(c)(2)(B) are treated as such whether or not carried out by an organization described in section 170(c). However, a distribution to be used for an activity prohibited under section 501(c)(3), or for an activity that would cause loss of tax exemption if it were a substantial part of a section 501(c)(3) organization's total activities, is not for a purpose specified in section 170(c)(2)(B). Thus, a distribution used for political campaign intervention activity or attempts to influence legislation would be considered to be for a purpose not specified in section 170(c)(2)(B) [13] and, thus, if made directly or to an entity not described in section 170(b)(1)(A), or to a disqualified supporting organization, would be a taxable distribution.

The proposed regulations would also include a requirement, similar to the requirement in § 53.4945–6(c)(2), that a grant to an organization (other than one that is described in section 501(c)(3) and not in section 509(a)(4)) will not be considered to be for a purpose specified in section 170(c)(2)(B) unless the grantee agrees to separately account for grant funds (either by separately accounting for grant funds on its books or by segregating the grant funds). (Such grant funds must also be used for charitable purposes, consistent with the expenditure responsibility rules discussed in section 3.C.ii of this Explanation of Provisions of this preamble.)

ii. Expenditure Responsibility

Section 4966(c)(1)(B)(ii) requires sponsoring organizations to exercise expenditure responsibility in accordance with section 4945(h) for certain distributions. Thus, the proposed regulations cross-reference the section 4945(h) expenditure responsibility regulations applicable to private foundations, with one modification. In lieu of the requirements found in § 53.4945–5(b)(3)(iv)(c) and (b)(4)(iv)(c) (pertaining to the recipient's permitted use of the funds), the distributee would be required to agree not to: (1) make a grant to an organization that does not comply with the expenditure responsibility requirements, (2) make a grant to a natural person, or (3) make a grant, loan, compensation, or other similar payment (as described in section 4958(c)(2)) to a donor, donor-advisor, or related person with respect to the DAF from which the distribution that is the subject of the agreement is made. For purposes of these rules pertaining to the secondary use of distributions, the definition of ''grant'' set forth in § 53.4945–4(a)(2) would apply, rather than the broader definition of ''distribution'' found in proposed § 53.4966–1(e). If the definition of ''distribution'' found in proposed § 53.4966–1(e) applied, distributees would be required to exercise expenditure responsibility in the purchase of goods and services, which is not intended under the proposed rule.

The Treasury Department and the IRS request comments on this modification to the expenditure responsibility rules and whether additional guidance is needed.

4. Taxes on Taxable Distributions

Consistent with section 4966(a)(1), the proposed regulations would provide that an excise tax equal to 20 percent of the amount of the taxable distribution is imposed on each taxable distribution from a DAF. This excise tax is paid by the sponsoring organization of the DAF. The provisions of proposed § 53.4966–2 are generally similar to those of § 53.4958–1 and other chapter 42 excise tax regulations relating to the calculation of the tax on the organization and its managers.

In addition, consistent with section 4966(a)(2), the proposed regulations would provide that each fund manager who knowingly agrees to the making of a taxable distribution is liable for an excise tax equal to five percent of the amount of the taxable distribution, up to a maximum of $10,000 for any one taxable distribution. If more than one fund manager is liable for the excise tax, all such persons would be jointly and severally liable for that tax. The proposed regulations, consistent with section 4966(d)(3), would define a fund manager as (1) an officer, director, or trustee of the sponsoring organization, or any individual with authority or responsibility similar to that exercised by an officer, director, or trustee of an organization, regardless of title, and (2) with respect to any act (or failure to act), the employee having authority or responsibility (either individually or as a member of a collective body) for such act (or failure to act). An example of a failure to act by a fund manager resulting in a taxable distribution would be a failure to exercise expenditure responsibility if required.

The proposed regulations would provide that the agreement of any fund manager to the making of a taxable distribution consists of any manifestation of approval of the distribution that is sufficient to constitute an exercise of the fund manager's authority to approve, or authority to exercise discretion in recommending approval of, the making of the distribution by the sponsoring

[11] In defining a disqualified supporting organization, the proposed regulations use the definitions of supporting organization types under the section 509(a)(3) regulations.

[12] *See* note 7.

[13] The Treasury Department and the IRS also note that allowing distributions from a DAF for lobbying or political campaign activity would contravene the charitable contribution deduction rules and private foundation restrictions.

organization, whether or not it is the final or decisive act on behalf of the sponsoring organization.

A fund manager generally would be considered to have agreed to the making of a distribution with knowledge that it is a taxable distribution only if the manager (1) is in fact aware that it is a taxable distribution; or (2) has knowledge of facts sufficient to determine that, based on those facts, the distribution would be a taxable distribution and negligently fails to make reasonable attempts to ascertain whether the distribution is a taxable distribution. A fund manager generally would not be considered to have negligently failed to make reasonable attempts to ascertain whether a distribution is a taxable distribution if the distribution is made to an organization listed as an organization described in section 170(b)(1)(A) (other than a supporting organization) on the IRS's search tool, Tax Exempt Organization Search (Pub 78 data) (or if, with respect to a supporting organization, it gathers information to determine that the organization is not a disqualified supporting organization).

The Treasury Department and the IRS request comments on whether guidance is needed regarding a fund manager's reliance on professional advice.

Proposed Applicability Date

These regulations are proposed to be applicable to taxable years ending after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. A taxpayer may rely on these proposed regulations for taxable years ending before the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**.

The guidance these proposed regulations would provide with respect to disaster relief funds generally would be consistent with the guidance provided in section 5.01 of Notice 2006–109. However, in certain instances these proposed regulations would modify the guidance provided in Section 5.01 of Notice 2006–109. For taxable years ending before the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**, taxpayers may rely on the guidance provided in section 5.01 of Notice 2006–109 or, alternatively, on these proposed regulations, including for periods prior to November 14, 2023.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by January 16, 2024. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in these proposed regulations are as follows. Section 53.4966–4(a)(4)(ii) allows a sponsoring organization to rely on a certification from the donor that all distributions satisfy the special rules relating to the single identified organization exception. Section 53.4966–4(b), (c), and (d) require an organization with a fund excepted from the definition of a DAF to maintain records regarding recipients and the selection process for recipients. Section 53.4966–4(c) also requires the organization to approve in writing the selection committee whose members are nominated by a section 501(c)(4) organization. Section 53.4966–5(c) allows a sponsoring organization to avoid a taxable distribution to certain foreign organization distributees if it makes a good faith determination regarding their tax-exempt status. Section 53.4966–5(a)(1)(ii)(B) requires a sponsoring organization to exercise expenditure responsibility with respect to certain distributions.

The expected recordkeepers are sponsoring organizations of DAFs described in section 4966(d)(1), other organizations described in section 4966(d)(1)(A) and (B) that maintain funds excepted from the definition of a DAF under section 4966(d)(2)(B) or (C) (and certain donors to funds described in section 4966(d)(2)(B)(i)), foreign organization distributees that are the subject of equivalency determinations by sponsoring organizations, and recipients of expenditure responsibility distributions.

Estimated number of recordkeepers: 13,961.

Estimated average annual burden per recordkeeper: 3 hours, 47 minutes.

Estimated total annual recordkeeping burden: 52,874 hours.

Estimated annual frequency of responses: occasional.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the proposed regulations will not impact a substantial number of small entities. Based on IRS Statistics of Income data for 2019, there are 1,365,744 active nonprofit charitable organizations, of which 1,624 self-identified as sponsoring organizations of donor advised funds (DAFs). Another 82 organizations reported no DAFs but one or more funds similar to DAFs, for a total of 1,706 organizations reporting DAFs or funds similar to DAFs. Any economic impact stems from the collection of information under §§ 53.4966–4(a)(4)(ii); 53.4966–4(c)(2), (4), and (6); 53.4966–4(d)(4) and (6); and

53.4966–5(a)(1)(ii)(B) and (c)(2). The universe of sponsoring organizations that would be affected by the collection of information under §§ 53.4966–4(a)(4)(ii); 53.4966–4(c)(2), (4), and (6); 53.4966–4(d)(4) and (6); and 53.4966–5(a)(1)(ii)(B) and (c)(2) is a small subset of all sponsoring organizations, since those provisions apply to limited exceptions to DAF status, to foreign organizations determined to be the equivalent of a U.S. public charity, or to organizations receiving distributions for which expenditure responsibility is exercised. Thus, the number of organizations that will be affected by the collection of information under §§ 53.4966–4(a)(4)(ii); 53.4966–4(c)(2), (4), and (6); 53.4966–4(d)(4) and (6); and 53.4966–5(a)(1)(ii)(B) and (c)(2) will not be substantial. In 2019, of the 1,365,744 active nonprofit charitable organizations, 1,706 organizations reported 988,718 DAFs and 72,144 non-DAF funds similar to DAFs. We estimate that of the 72,144 non-DAF funds reported for 2019, 1.5 percent or 1082 will be section 501(c)(4) scholarship funds subject to the collection of information in § 53.4966–4(c)(2), (4), and (6), and that these funds will be maintained by a significantly small subset of the 1,706 total organizations reporting DAFs or funds similar to DAFs. In 2019, 0.3 percent of the 1,365,744 active nonprofit charitable organizations reported disaster relief preparedness as their primary mission. Thus, we estimate that 0.3 percent or five of the 1,706 organizations may sponsor disaster relief funds subject to the collection of information in § 53.4966–4(d)(4) and (6). Any costs incurred in meeting the collections of information applicable to section 501(c)(4) scholarship funds and disaster relief funds would be considerably less than the costs incurred in establishing and running a separate section 501(c)(3) organization, which would be the alternative means of providing the same benefits through a nonprofit charitable organization. In addition, based on IRS Statistics of Income data for 2019, of the 1,624 self-identified sponsoring organizations, an estimated 446 organizations made grants to foreign organizations pursuant to equivalency determinations subject to the collection in § 53.4966–5(c)(2). An indeterminate number of foreign organizations receiving grants from the 446 grant-making organizations also would be subject to the collection of information in § 53.4966–5(c)(2). The provisions of § 53.4966–5(c)(2) relieve both sponsoring organizations and foreign organizations of the statutory expenditure responsibility requirements under section 4966(c)(1)(B)(ii) that would otherwise apply to grants to foreign organizations and that most organizations prefer to avoid. Based on the 2019 annual returns of private foundations, we estimate that very few sponsoring organizations make grants requiring expenditure responsibility. For these reasons, pursuant to the Regulatory Flexibility Act (5 U.S.C. Chapter 6), the Secretary hereby certifies that this rule will not have significant economic impact on a substantial number of small entities. Notwithstanding this certification, the Treasury Department and the IRS invite comments on the impact this rule may have on small entities.

Pursuant to section 7805(f) of the Code, this proposed rule has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small entities.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2022, that threshold is approximately $190 million. The proposed regulations do not propose any rule that would include any Federal mandate that may result in expenditures by State, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. The proposed regulations do not propose rules that would have federalism implications, impose substantial direct compliance costs on State and local governments, or preempt State law within the meaning of the Executive Order.

Comments and Requests for a Public Hearing

Consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations, and specifically request comments on the clarity of the proposed rules and how they can be made easier to understand, as well as on the proposed transition relief, including whether and in what circumstances additional transition guidance or relief may be necessary. All comments submitted will be made available at *https://www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person that timely submits electronic or written comments. Requests for a public hearing are encouraged to be made electronically. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the **Federal Register**. Announcement 2023–16, 2023–20 I.R.B. 854 (May 15, 2023), provides that public hearings will be conducted in person, although the IRS will continue to provide a telephonic option for individuals who wish to attend or testify at a hearing by telephone. Any telephonic hearing will be made accessible to people with disabilities.

Statement of Availability of IRS Documents

Announcement 2023–16, Notices 2006–109, 2007–21, 2015–62, and 2017–73, and Revenue Procedures 76–47, 80–39, and 2017–53 are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov.*

Drafting Information

The principal author of these regulations is Ward L. Thomas, Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 53 as follows:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 53 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Sections 53.4966–0 through 53.4966–6 are added to read as follows:

Sec.

* * * * *

* * * * *

§ 53.4966–0 Outline of regulations.

This section lists the paragraphs in §§ 53.4966–1 through 53.4966–6.

§ 53.4966–1 Definitions.

(a) *In general.* The definitions in paragraphs (b) through (m) of this section apply for purposes of section 4966 of the Internal Revenue Code (Code) and the section 4966 regulations.

(b) *Contribution.* The term *contribution* means any gift, bequest, or similar payment or transfer, whether in cash or in-kind, to or for the use of a sponsoring organization.

(c) *Disqualified supporting organization.* With respect to any distribution, the term *disqualified supporting organization* means—

(1) Any Type III supporting organization, as defined in section 4943(f)(5)(A) of the Code and the regulations under section 509(a)(3) of the Code, that is not a functionally integrated Type III supporting organization, as defined in section 4943(f)(5)(B) and the regulations under section 509(a)(3) (*see* § 1.509(a)–4(i) of this chapter); and

(2) Any other supporting organization described in section 509(a)(3) if a donor or donor-advisor with respect to the donor advised fund (either alone or together with related persons) directly or indirectly controls a supported organization (as defined in section 509(f)(3)) of the supporting organization. For purposes of this paragraph (c), a supported organization will be considered controlled by a donor or donor-advisor with respect to the donor advised fund if that donor or donor-advisor, either alone or by aggregating votes or positions of authority with related persons, may require the supported organization to perform any act that significantly affects its operations or may prevent the supported organization from performing any such act. The supported organization will be considered to be controlled directly or indirectly by a donor or donor-advisor with respect to the donor advised fund, either alone or together with related persons, if the voting power of such persons is 50 percent or more of the total voting power of the governing body of such supported organization or if one or more of such persons have the right to exercise veto power over the actions of the governing body of the supported organization. However, all pertinent facts and circumstances will be taken into consideration in determining whether one or more persons do in fact directly or indirectly control the supported organization.

(d) *Distributee.* The term *distributee* means any person, governmental entity, or donor advised fund receiving a distribution.

(e) *Distribution*—(1) *In general.* The term *distribution* means any grant, payment, disbursement, or transfer, whether in cash or in kind, from a donor advised fund. Except as provided in paragraph (e)(2) of this section, investments and reasonable investment or grant-related fees are not considered distributions.

(2) *Deemed distribution.* A distribution includes any use of donor advised fund assets that results in a more than incidental benefit (within the meaning of section 4967) to a donor, donor-advisor, or related person. In addition, a distribution includes an expense charged solely to a particular donor advised fund that is paid, directly

or indirectly, to a donor, donor-advisor, or related person with respect to the donor advised fund.

(f) *Donor.* The term *donor* means any person described in section 7701(a)(1) of the Code that makes a contribution to a fund or account of a sponsoring organization, other than a contributor that is a governmental unit described in section 170(c)(1) of the Code or an organization described in section 509(a)(1), (2), or (3) that is not a disqualified supporting organization.

(g) *Donor advised fund. See* § 53.4966–3 for the definition of donor advised fund. *See* § 53.4966–4 for exceptions to the definition of donor advised fund.

(h) *Donor-advisor*—(1) *In general.* The term *donor-advisor* means a person appointed or designated by a donor to have advisory privileges regarding the distribution or investment of assets held in a fund or account of a sponsoring organization. If a donor-advisor delegates any of the donor-advisor's advisory privileges to another person, or appoints or designates another donor-advisor, that person is also a donor-advisor. No particular form of appointment or designation is necessary. Except as provided in paragraphs (h)(3)(ii) and (h)(4) of this section, a donor-advisor includes a person recommended by a donor or donor-advisor to have advisory privileges if the sponsoring organization provides such privileges.

(2) *Person who establishes fund or account.* A person (other than a person or governmental unit excepted from status as a donor under paragraph (f) of this section) who establishes a fund or account and advises as to the distribution or investment of amounts in that fund or account will be treated as a donor-advisor with respect to that fund or account, regardless of whether the person contributes to the fund or account.

(3) *Personal investment advisors*—(i) *In general.* An investment advisor defined in section 4958(f)(8)(B) of the Code who manages the investment of, or provides investment advice with respect to, both the assets maintained in a donor advised fund and the personal assets of a donor to that donor advised fund (personal investment advisor) will be treated as a donor-advisor with respect to the donor advised fund while serving in that dual capacity regardless of whether the donor appointed, designated, or recommended the personal investment advisor.

(ii) *Exception.* A personal investment advisor is not considered a donor-advisor if the personal investment advisor is properly viewed as providing services to the sponsoring organization as a whole, rather than providing services to the donor advised fund.

(4) *Donor-recommended advisory committee member.* A person recommended by a donor or donor-advisor and appointed by the sponsoring organization to serve as a member of a committee of the sponsoring organization that advises as to distributions or investments of amounts in a fund or account is a donor-advisor unless—

(i) The recommendation is based on objective criteria related to the expertise of the member in the particular field of interest or purpose of the fund or account;

(ii) The committee consists of three or more individuals, and a majority of the committee is not recommended by the donor or donor-advisor; and

(iii) The recommended person is not a related person with respect to the recommending donor or donor-advisor.

(i) *Fund manager*—(1) *In general.* The term *fund manager* means, with respect to any sponsoring organization—

(i) An officer, director, or trustee of the sponsoring organization or any person having authority or responsibility similar to that exercised by an officer, director, or trustee of a sponsoring organization; or

(ii) With respect to any act (or failure to act) resulting in a taxable distribution, the employee who has final authority or responsibility (either individually or as a member of a collective body) for the act (or failure to act).

(2) *Delegation of authority.* A person has authority or responsibility similar to that exercised by an officer, director, or trustee of a sponsoring organization within the meaning of paragraph (i)(1)(i) of this section if, with respect to an act (or failure to act) resulting in a taxable distribution, he or she has been delegated final authority or responsibility with respect to the act by an officer, director, or trustee of the sponsoring organization or by the governing body of the sponsoring organization. For example, an investment manager is a fund manager with respect to a taxable distribution if the sponsoring organization's governing body delegated to the investment manager the final authority to make certain investment decisions and, in the exercise of that authority, the manager committed the sponsoring organization to making a taxable distribution. To be considered to have authority or responsibility similar to that exercised by an officer, director, or trustee of a sponsoring organization within the meaning of paragraph (i)(1)(i) of this section, a person need not be an employee of the sponsoring organization. A person does not have authority or responsibility similar to that exercised by an officer, director, or trustee of a sponsoring organization within the meaning of paragraph (i)(1)(i) of this section if the person is merely implementing a decision made by a superior.

(j) *Related persons.* With respect to any individual, the term *related person* means a family member of the individual (as defined in section 4958(f)(4)). With respect to any person or persons, the term *related person* also means a 35-percent controlled entity (as defined in section 4958(f)(3) by substituting *such person or persons or their family members* for *persons described in subparagraph (A) or (B) of paragraph (1)* in section 4958(f)(3)(A)(i)). *See* section 4958(f)(7)(B) and (C).

(k) *Section 4966 regulations.* The term *section 4966 regulations* means this section and §§ 53.4966–2 through 53.4966–6.

(l) *Sponsoring organization.* The term *sponsoring organization* means any organization that—

(1) Is described in section 170 (other than a governmental unit described in section 170(c)(1)), without the requirement under section 170(c)(2)(A) that it be created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;

(2) Is not a private foundation (as defined in section 509(a) and the regulations under section 509(a)); and

(3) Maintains one or more donor advised funds.

(m) *Taxable distribution. See* § 53.4966–5 for the definition of taxable distribution.

§ 53.4966–2 Taxes on taxable distributions.

(a) *In general.* Section 4966 of the Internal Revenue Code imposes two excise taxes with respect to taxable distributions from a donor advised fund. Paragraph (b) of this section describes the excise tax under section 4966(a)(1) imposed on a sponsoring organization of a donor advised fund. Paragraph (c) of this section describes the excise tax under section 4966(a)(2) imposed on a fund manager who knowingly agrees to a taxable distribution.

(b) *Taxes paid by the sponsoring organization.* For each taxable distribution, the excise tax imposed by section 4966(a)(1) is equal to 20 percent of the amount of the taxable distribution from a donor advised fund. The tax imposed by section 4966(a)(1) (20-percent section 4966 tax) is paid by the sponsoring organization of the donor advised fund.

(c) *Taxes paid by fund managers*—(1) *In general.* For each taxable distribution with respect to which section 4966(a)(1) imposes an excise tax, the excise tax imposed by section 4966(a)(2) is equal to five percent of the amount of the taxable distribution on the agreement of any fund manager who agreed to the making of the taxable distribution with knowledge that it is a taxable distribution as described in paragraph (c)(3) of this section. The tax imposed by section 4966(a)(2) (five-percent section 4966 tax) is paid by the fund manager or managers who agreed to the making of the taxable distribution.

(2) *Agreement.* The agreement of any fund manager to the making of a taxable distribution consists of any manifestation of approval of the distribution that is sufficient to constitute an exercise of the fund manager's authority to approve, or to exercise discretion in recommending approval of, the making of the distribution by the sponsoring organization, whether or not the manifestation of approval is the final or decisive approval on behalf of the sponsoring organization.

(3) *Knowledge.* For purposes of section 4966(a)(2), a fund manager agrees to the making of a distribution with knowledge that it is a taxable distribution only if the manager either—

(i) Is in fact aware that it is a taxable distribution; or

(ii) Has knowledge of facts sufficient to determine that, based on those facts, the distribution would be a taxable distribution and negligently fails to make reasonable attempts to ascertain whether the distribution is a taxable distribution.

(4) *Joint and several liability.* In any case in which more than one fund manager is liable for the five-percent section 4966 tax, all such fund managers are jointly and severally liable for the five-percent section 4966 taxes imposed with respect to that distribution.

(5) *Limit on liability for managers.* The maximum aggregate amount of five-percent section 4966 tax collectible for any one taxable distribution is $10,000.

§ 53.4966–3 Definition of donor advised fund.

(a) *In general.* Except as provided in § 53.4966–4, the term *donor advised fund* means a fund or account—

(1) That is separately identified by reference to contributions of a donor or donors in accordance with paragraph (b) of this section;

(2) That is owned and controlled by a sponsoring organization; and

(3) With respect to which at least one donor or donor-advisor has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in the fund or account by reason of the donor's status as a donor in accordance with paragraph (c) of this section.

(b) *Separate identification by reference to contributions of a donor or donors*—(1) *In general.* A fund or account is separately identified by reference to contributions of a donor or donors if the sponsoring organization maintains a formal record of contributions to the fund or account relating to a donor or donors. If there is no formal record, whether a fund or account is separately identified by reference to contributions of a donor or donors is based on all the facts and circumstances.

(2) *Facts and circumstances tending to show that a fund or account is separately identified.* Facts and circumstances that are relevant in determining that a fund or account is separately identified by reference to contributions of a donor or donors include—

(i) The fund or account balance reflects items such as contributions, dividends, interest, distributions, administrative expenses, and gains and losses (realized or unrealized);

(ii) The fund or account is named after one or more donors, donor-advisors, or related persons;

(iii) The sponsoring organization refers to the fund or account as a donor advised fund;

(iv) The sponsoring organization has an agreement or understanding with one or more donors or donor-advisors that the fund or account is a donor advised fund;

(v) One or more donors or donor-advisors regularly receive a fund or account statement from the sponsoring organization; and

(vi) The sponsoring organization generally solicits advice from the donor(s) or donor-advisor(s) before it makes distributions from the fund or account.

(3) *Commingling.* A fund or account does not fail to be a donor advised fund merely because the sponsoring organization commingles the assets attributed to the fund or account with other assets of the sponsoring organization, as long as the sponsoring organization treats the fund or account as attributable to contributions of a donor or donors.

(c) *Advisory privileges*—(1) *In general*—(i) *Facts and circumstances.* Under section 4966(d)(2)(A)(iii) of the Internal Revenue Code (Code), at least one donor or donor-advisor must have, or reasonably expect to have, advisory privileges by reason of the donor's status as a donor. A donor or donor-advisor may have, or reasonably expect to have, advisory privileges even in the absence of actual provision of advice. The existence of advisory privileges, or the reasonable expectation thereof, is based on all the facts and circumstances, which in turn depend on the conduct (and any agreement or understanding) of both the donor(s) or donor-advisor(s) and the sponsoring organization. Advisory privileges include those arising from service on an advisory committee. If a donor or donor-advisor has, or reasonably expects to have, advisory privileges as defined in this paragraph (c), then the advisory privileges are deemed to be by reason of the donor's status as a donor except as otherwise provided in this paragraph (c).

(ii) *Application to entire fund or account.* If at least one donor or donor-advisor has, or reasonably expects to have, advisory privileges with respect to a fund or account or any portion of a fund or account, advisory privileges by reason of the donor's status as a donor exist with respect to that fund or account even if there are multiple donors to the fund or account.

(iii) *Donor, donor-advisor, or related person appointed to an advisory committee*—(A) *In general.* A sponsoring organization's appointment of a donor, donor-advisor, or related person to be on a committee of persons that advises as to distributions or investments of amounts in the fund or account will be deemed to result in advisory privileges by reason of the donor's status as a donor unless–

(*1*) The appointment is based on objective criteria related to the expertise of the appointee in the particular field of interest or purpose of the fund or account;

(*2*) The committee consists of three or more individuals, not more than one-third of whom are related persons with respect to any member of the committee; and

(*3*) The appointee is not a significant contributor to the fund or account, taking into account contributions by related persons with respect to the appointee, at the time of appointment.

(B) *Exception.* An appointee may be deemed to have advisory privileges by reason of a donor's status as a donor based on the facts and circumstances, such as if the appointee was not a significant contributor to a fund or account at the time of appointment but became a significant contributor shortly thereafter.

(iv) *Officers, etc. of sponsoring organization.* Advice provided solely in a person's capacity as an officer, director, employee (or in a similar capacity) of a sponsoring organization does not by itself give rise to advisory privileges by reason of a donor's status as a donor. However, if an officer, director, or employee of the sponsoring organization is allowed to advise how to distribute or invest amounts in a fund or account because of such person's contributions to the fund or account, such person will be considered to have advisory privileges by reason of the person's status as a donor with respect to that fund or account.

(v) *Deemed advisory privileges.* Except as provided in paragraph (c)(1)(iv) of this section, if a donor is the sole person with advisory privileges with respect to a fund or account, the advisory privileges will be deemed to be by reason of the donor's status as a donor.

(2) *Facts sufficient to find advisory privileges.* A donor or donor-advisor has advisory privileges by reason of the donor's status as a donor, regardless of whether they are exercised, if—

(i) The sponsoring organization allows a donor or donor-advisor to provide nonbinding recommendations regarding distributions from, or regarding the investment of assets held in, a fund or account;

(ii) A written agreement between the sponsoring organization and a donor or a donor-advisor states that a donor or donor-advisor has advisory privileges;

(iii) A written document or any marketing material made available to a donor or donor-advisor indicates that a donor or donor-advisor may provide advice to the sponsoring organization regarding the distribution or investment of amounts held by a sponsoring organization (for example, a pre-approved list of investment options or distributees that the sponsoring organization provides to a donor or donor-advisor); or

(iv) The sponsoring organization generally solicits advice from a donor or donor-advisor regarding the distribution or investment of amounts held in a fund or account.

(d) *Substance over form.* The Commissioner may look to the substance of an arrangement, not merely its form, in determining whether the arrangement is a donor advised fund.

(e) *Examples.* The following examples illustrate the principles of this section (in each example, assume that the funds or accounts at issue are owned and controlled by the sponsoring organization):

(1) *Example 1.* A, B, and C are unrelated donors who jointly establish Fund X at sponsoring organization Y. A, B, and C each make equal contributions to Fund X and each have advisory privileges with respect to all of the assets in Fund X. Y sends A monthly account statements showing Fund X's account balance and any transactions in the account. A shares information about Fund X with B and C when asked or as needed. Fund X is separately identified by reference to contributions of donors and is a donor advised fund.

(2) *Example 2.* Assume the same facts as paragraph (e)(1) of this section (*Example 1*), except that A makes 70 percent of the contributions, B 20 percent, and C 10 percent, with each having advisory privileges with respect to all of the assets in Fund X. Fund X is separately identified by reference to contributions of donors and is a donor advised fund.

(3) *Example 3.* In Year 1, X, a governmental entity described in section 170(c)(1), and Y, a public charity described in section 509(a)(1) of the Code, establish and fully fund Fund M at sponsoring organization A. Fund M is separately identified with respect to X and Y. However, because neither X nor Y is a donor, Fund M is not separately identified by reference to contributions of a donor or donors and is not a donor advised fund.

(4) *Example 4.* Assume the same facts as paragraph (e)(3) of this section (*Example 3*), except that in Year 2 individual donors contribute to Fund M. Only X and Y have advisory privileges with respect to the distribution or investment of amounts held in Fund M. Because no donor or donor-advisor has advisory privileges with respect to Fund M, Fund M is not a donor advised fund.

(5) *Example 5.* F, an individual, is a donor to Fund T, a multiple-donor fund at sponsoring organization X. F is also a director of X who provides investment advice that affects all funds at X in his capacity as a director. F will not be considered to have advisory privileges with respect to Fund T solely because of F's duties as director of X.

(6) *Example 6.* Assume the same facts as paragraph (e)(5) of this section (*Example 5*), except that by reason of F's contribution to Fund T, F is appointed to a committee that advises how to distribute or invest amounts in Fund T. F has advisory privileges with respect to Fund T by reason of F's status as a donor.

(7) *Example 7.* Sponsoring organization Y has established Fund P, which is dedicated to the relief of poverty in City Z. Fund P is advised by a 5-member committee selected by Y from residents of City Z, potentially including donors to Fund P. The committee is comprised of community leaders and other persons with special knowledge or experience in the relief of poverty. Each committee member serves for a term of three years and cannot serve more than two terms. No committee member is related to another committee member and no committee member is (together with related persons with respect to any committee member) a significant contributor to Fund P. Over 100 citizens of City Z have contributed to Fund P. Y maintains a formal record of donors to Fund P and amounts contributed, and thus Fund P is separately identified by reference to contributions of donors. However, under the circumstances, no person who serves on the advisory committee of Fund P is deemed to have advisory privileges by reason of a donor's status as a donor. Fund P is not a donor advised fund.

(8) *Example 8.* Fifteen unrelated individuals establish Fund Q at sponsoring organization T. Each individual contributes to Fund Q, and these individuals constitute a committee appointed by T to advise on investments and distributions from Fund Q. T regularly issues a statement to one of the committee members (who shares the information with the others) showing the account balance and any transactions with Fund Q. Fund Q is a donor advised fund.

(9) *Example 9.* Assume the same facts as in paragraph (e)(8) of this section (*Example 8*), except that the advisory committee consists of three of the donors, rotated annually. Fund Q is a donor advised fund.

(10) *Example 10.* N, an individual, establishes Fund O at W, a sponsoring organization. Fund O serves as a memorial to N's daughter, and receives many contributions from unrelated individuals. N is the only person with advisory privileges and thus is a donor advisor. Fund O is a donor advised fund.

(11) *Example 11.* F, an individual, establishes Fund R at T, a sponsoring organization, to provide scholarship grants for the advancement of science at local secondary schools. F is the sole donor to Fund R. Pursuant to F's recommendation, an advisory committee consisting of five persons is solely responsible for advising T with

respect to the distribution and investment of amounts held in Fund R. F recommends (and T appoints) two individuals who are the heads of the science departments of those schools, neither of whom is related to F. T independently appoints the other three committee members, none of whom are recommended by donors or related to donors. The persons recommended by F for committee membership are not donor-advisors because F's recommendations are for individuals who are not related persons with respect to F, who, based on objective criteria, have expertise in the field of interest of Fund R, the committee consists of more than two individuals, and a majority of the committee is not recommended by F. Because no donor or donor-advisor has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in the fund or account by reason of the donor's status as a donor, Fund R is not a donor advised fund.

§ 53.4966–4 Exceptions to the definition of donor advised fund.

(a) *Funds or accounts that make distributions only to a single identified organization*—(1) *In general.* The term donor advised fund does not include any fund or account that is established by written agreement to make (and that actually does make) distributions only to a single identified organization as defined in paragraph (a)(2) of this section, and that meets the other requirements of this paragraph (a).

(2) *Single identified organization.* For purposes of this paragraph (a), the term *single identified organization* means an organization that is described in sections 170(c)(2) and 509(a)(1), (2), or (3) of the Internal Revenue Code (Code) (other than a disqualified supporting organization), or that is a governmental entity described in section 170(c)(1) if the distribution is exclusively for public purposes.

(3) *Distributions to a single identified organization.* The sponsoring organization must make distributions from the fund or account only to the single identified organization for use in the single identified organization's activities (other than the activities of administering donor advised funds or grant-making), and not to third parties on behalf of the single identified organization.

(4) *Special rules*—(i) *In general.* A fund or account will not be treated as making distributions only to a single identified organization if—

(A) A donor, donor-advisor, or related person has or reasonably expects to have the ability to advise regarding some or all of the distributions from the single identified organization to other individuals or entities; or

(B) A distribution from the fund or account provides, directly or indirectly, a more than incidental benefit (within the meaning of section 4967 of the Code), to a donor, donor-advisor, or related person with respect to the fund.

(ii) *Certifications.* A sponsoring organization may rely on a certification from the donor that no distribution will be described in paragraph (a)(4)(i) of this section as long as the sponsoring organization lacks knowledge to the contrary.

(5) *Substitution for specified organization.* A sponsoring organization may substitute another single identified organization if the substitution is conditioned upon the occurrence of a loss of exemption, substantial failure or abandonment of operations, or a dissolution or reorganization that results in the named single identified organization ceasing to exist, and the event is beyond the direct or indirect control of donor(s), donor-advisor(s), or related persons.

(6) *Examples.* The following examples illustrate the principles of this section:

(i) *Example 1.* A and B, a married couple, establish Fund V at X, a sponsoring organization. Fund V is established by written agreement to make distributions only to Y, a university recognized as exempt under section 501(c)(3) of the Code and described in section 170(b)(1)(A)(ii). In the gift instrument, A and B reserve the right to recommend which university projects should be supported by Fund V and which investments to make with fund assets. A and B certify that A, B, and persons related to A and B do not benefit from any distributions from Fund V and do not have, or reasonably expect to have, the ability to advise regarding some or all of the distributions from Y to other entities. Fund V is not a donor advised fund because all distributions are made to a single identified organization, Y.

(ii) *Example 2.* Assume the same facts as paragraph (a)(6)(i) of this section (*Example 1*), except that the sponsoring organization uses funds from Fund V to purchase goods to distribute to the community on behalf of Y. Fund V does not meet the exception for a fund or account that makes distributions only to a single identified organization because not all distributions from Fund V are made to the single identified organization, Y.

(iii) *Example 3.* Assume the same facts as paragraph (a)(6)(i) of this section (*Example 1*), except that A is on the Board of Y. Because A has the ability to advise some or all of the distributions from Y to other entities, Fund V does not meet the exception for a fund or account that makes distributions only to a single identified organization.

(b) *Certain funds or accounts that grant scholarships*—(1) *In general.* The term donor advised fund does not include any fund or account with respect to which a donor or donor-advisor advises as to which individuals receive grants for travel, study, or other similar purposes, if—

(i) The exclusive purpose of the fund or account is to make grants to individuals for travel, study, or other similar purposes;

(ii) The donor or donor-advisor provides advice exclusively in the person's capacity as a member of the selection committee selecting the individuals who receive grants;

(iii) All the members of the selection committee are appointed by the sponsoring organization;

(iv) No combination of donor(s), donor-advisor(s), or related persons controls, directly or indirectly, the selection committee;

(v) All grants from the fund or account are awarded on an objective and nondiscriminatory basis pursuant to a written procedure approved in advance by the board of directors of the sponsoring organization, and the procedure is designed to ensure that all the grants adhere to the principles set forth by section 4945(g)(1), (2) or (3) of the Code and the regulations under section 4945 (other than the requirement to get advance approval by the IRS); and

(vi) The fund or account maintains adequate records as described in § 53.4945–4(c)(6) that demonstrate the recipients were selected on an objective and nondiscriminatory basis.

(2) *Control of committee*—(i) *In general.* For purposes of paragraph (b)(1)(iv) of this section, whether control of the committee exists is determined by looking to the substance, rather than the form, of any arrangement.

(ii) *Direct control.* A committee will be considered *controlled* if donor(s), donor-advisor(s), or related persons, either alone or together—

(A) Can require the committee to take or refrain from taking any action;

(B) Control 50 percent or more of the total voting power of the committee; or

(C) Have the right to exercise veto power over the committee's decisions.

(iii) *Indirect control.* Whether a committee is *indirectly controlled* by a combination of donor(s), donor-advisor(s), or related persons is determined by the facts and circumstances, including the nature of any relationships among the members of the selection committee and with any donor, donor-advisor, or related person. For example, a committee is *indirectly controlled* by a combination of donor(s), donor-advisor(s), or related persons if a majority of the selection committee is currently engaged by the donor, donor-advisor, or any related person in any employment or fiduciary capacity, whether as an employee or independent contractor, or recommended by a donor or donor-advisor and appointed to the selection committee based on other than objective criteria regarding the person's expertise, or a combination thereof.

(3) *Appointing members of the selection committee.* In appointing the members of the selection committee, a sponsoring organization may act through its board of directors, trustees, or other governing body; a committee appointed by the governing body; or an appropriate officer of the sponsoring organization.

(4) *Examples.* The following examples illustrate the principles of this section:

(i) *Example 1.* Fund O was established at sponsoring organization Y to grant scholarships. Fund O receives contributions from many unrelated donors, including D, E, and F. Y appointed D, E, and F to serve on Fund O's 5-person selection committee by reason of their status as donors. Because donors control its selection committee, Fund O does not meet the exception for certain funds or accounts that grant scholarships under paragraph (b) of this section.

(ii) *Example 2.* Assume the same facts as in paragraph (b)(4)(i) of this section (*Example 1*), except that Y appoints G, a donor; H, G's donor-advisor; and I, an attorney currently employed by G to serve on Fund O's 5-person selection committee. Y appoints G, H, and I by reason of G's status as a donor. The committee is indirectly controlled by G, and thus the fund does not meet the exception for certain funds or accounts that grant scholarships under paragraph (b) of this section.

(iii) *Example 3.* Assume the same facts as in paragraph (b)(4)(i) of this section (*Example 1*), except that Y appoints D and four officers of Y who have not contributed to Fund O to serve on the 5-person selection committee. Assuming that the other requirements of paragraph (b)(1) of this section are met and that the facts do not indicate that D indirectly controls the committee, Fund O meets the exception for certain funds or accounts that grant scholarships under paragraph (b) of this section.

(c) *Certain scholarship funds established by certain section 501(c)(4) organizations.* The term donor advised fund does not include a fund or account established by a broad-based membership organization described in section 501(c)(4) that establishes a committee to advise as to which individuals receive grants, if—

(1) The fund or account's single identified charitable purpose is to make grants to individuals for scholarships described in section 4945(g)(1);

(2) The selection of recipients of scholarships from the fund or account is made using a selection committee the members of which are nominated by the section 501(c)(4) organization and approved in writing by the sponsoring organization;

(3) The fund or account serves a charitable class;

(4) Recipients of grants from the fund or account are selected on an objective and nondiscriminatory basis pursuant to a procedure, approved in advance by the sponsoring organization's board of directors, that is designed to ensure that all the grants meet the requirements of section 4945(g)(1) and the regulations under section 4945 (other than the requirement to get advance approval by the IRS);

(5) No distribution is made from the fund or account to, or for the benefit of:

(i) Any director, officer, or trustee of the sponsoring organization of the fund or account;

(ii) Any member of the fund or account's selection committee;

(iii) Any member, honorary member, or employee of the section 501(c)(4) organization; or

(iv) Any related person with respect to anyone described in paragraph (c)(5)(i), (ii), or (iii) of this section; and

(6) The fund or account maintains adequate records as described in § 53.4945–4(c)(6) that demonstrate the recipients were selected on an objective and nondiscriminatory basis.

(d) *Certain disaster relief funds.* The term donor advised fund does not include a fund or account if—

(1) The fund or account's single identified charitable purpose is to provide relief from one or more qualified disasters within the meaning of section 139(c)(1), (2), or (3) of the Code;

(2) The fund or account serves a charitable class;

(3) The selection of recipients of grants from the fund or account is made using a selection committee—

(i) That is not directly or indirectly controlled (as defined in paragraph (b)(2) of this section) by donor(s), donor-advisor(s), or related persons and to which all the members are appointed by the sponsoring organization; or

(ii) The majority of which, if the fund or account gives preference or priority to employees (or their family members) of an employer to receive grants, consists of persons who are not in a position to exercise substantial influence over the affairs of the employer (or adequate substitute procedures exist to ensure that any benefit to the employer is incidental and tenuous);

(4) The selection committee selects recipients of grants from the fund or account (and determines the amounts of such grants) based on objective and nondiscriminatory determinations of need pursuant to a procedure approved in advance by the board of directors of the sponsoring organization;

(5) No distribution is made from the fund or account that would result in more than incidental benefit (within the meaning of section 4967 of the Code) to—

(i) Any director, officer, or trustee of the sponsoring organization of the fund or account;

(ii) Any member of the fund's selection committee; or

(iii) Any related person with respect to a director, officer, or trustee of the sponsoring organization or to a member of the selection committee; and

(6) Records are maintained that demonstrate the need of the recipients for the disaster relief assistance provided and that satisfy section 6033(b)(14) of the Code.

§ 53.4966–5 Taxable distributions.

(a) *Taxable distributions*—(1) *In general.* Except as provided in paragraphs (a)(2) and (3) of this section, the term *taxable distribution* means any distribution from a donor advised fund—

(i) To any natural person; or

(ii) To any other person if—

(A) The distribution is for any purpose other than one specified in section 170(c)(2)(B) of the Internal Revenue Code (Code), as defined in paragraph (b) of this section; or

(B) The sponsoring organization does not exercise expenditure responsibility with respect to the distribution in accordance with paragraph (d) of this section.

(2) *Non-taxable distributions.* The term taxable distribution does not include any distribution from a donor advised fund to—

(i) Any organization described in section 170(b)(1)(A) (other than a disqualified supporting organization), as defined in paragraph (c) of this section;

(ii) The sponsoring organization of the donor advised fund; or

(iii) Any other donor advised fund.

(3) *Special rule.* If a series of distributions is undertaken pursuant to

a plan that achieves a result inconsistent with the purposes of section 4966 of the Code, the distributions are treated as a single distribution for purposes of section 4966. For example, if a donor advises a distribution, that the sponsoring organization subsequently makes, from a donor advised fund to Charity X and the donor or the sponsoring organization arranges for Charity X to use the funds to make distributions to individuals recommended by the donor, the distribution will be a taxable distribution from the sponsoring organization to individuals.

(b) *Distribution for purpose not specified in section 170(c)(2)(B)*—(1) *In general.* For purposes of paragraph (a)(1)(ii)(A) of this section, a distribution to be used for an activity that is prohibited under section 501(c)(3) of the Code or for an activity that, if it were a substantial part of a section 501(c)(3) organization's total activities, would cause loss of tax exemption, is not for a purpose specified in section 170(c)(2)(B). For example, a distribution used for political campaign intervention activity or for attempting to influence legislation is considered to be for a purpose not specified in section 170(c)(2)(B). Purposes described in section 170(c)(2)(B) are treated as such whether or not carried out by an organization described in section 170(c).

(2) *Grants to noncharitable organizations.* If the distribution is a grant (as defined in § 53.4945–4(a)(2)) to any organization (other than an organization described in section 501(c)(3) and not in section 509(a)(4) of the Code), it will not be considered for a purpose specified in section 170(c)(2)(B) unless the grantee agrees either to separately account for the grant funds on its books or to segregate the grant funds.

(c) *Organizations described in section 170(b)(1)(A)*—(1) *In general.* For purposes of paragraph (a)(2)(i) of this section, an organization will be treated as described in section 170(b)(1)(A) if—

(i) It is described in both sections 170(b)(1)(A) and 170(c)(2), other than a disqualified supporting organization, and without regard to section 170(c)(2)(A);

(ii) It is a governmental unit described in section 170(b)(1)(A)(v) and 170(c)(1) (or an agency or instrumentality thereof, including an organization described in section 511(a)(2)(B) of the Code), as long as the distribution to it is made for exclusively public purposes; or

(iii) It is a foreign government (or an agency or instrumentality thereof), or an international organization designated as such by Executive Order under 22 U.S.C. 288, as long as the distribution to it is made exclusively for charitable purposes as described in section 170(c)(2)(B).

(2) *Certain foreign organizations.* For purposes of this section, a foreign organization distributee that does not have a ruling or determination letter that it is an organization described in sections 501(c)(3) and 170(b)(1)(A) (other than a disqualified supporting organization) will be treated as described in sections 501(c)(3) and 170(b)(1)(A) (other than a disqualified supporting organization) if, prior to the distribution, the sponsoring organization makes a good faith determination, using procedures similar to those set forth in § 53.4945–5(a)(5), that the distributee is described in sections 501(c)(3) and 170(b)(1)(A) (other than a disqualified supporting organization).

(d) *Expenditure responsibility*—(1) *In general.* For purposes of paragraph (a)(1)(ii)(B) of this section, a sponsoring organization will be treated as exercising expenditure responsibility if it follows the procedures set forth in § 53.4945–5(b) through (e) as modified by paragraph (d)(2) of this section.

(2) *Special rules*—(i) *Non-applicability of certain Code provisions.* References to sections 507, 4945(d), and 4948 of the Code do not apply.

(ii) *Substituted terms.* In applying § 53.4945–5(b) through (e), substitute *sponsoring organization* for *private foundation, granting private foundation, granting foundation, grantor foundation, foundation,* or *grantor* (but not for private foundation grantees in § 53.4945–5(c)); substitute *distribution* for *grant* or *amount granted;* substitute *distributee* for *grantee;* and substitute *taxable distribution* for *taxable expenditure* each place they appear.

(iii) *Additional modifications.* In lieu of § 53.4945–5(b)(3)(iv)(*c*) and (b)(4)(iv)(*c*), the distributee must agree not to use any of the funds to make any grant to an organization that does not comply with the expenditure responsibility requirements of this paragraph (d), to make any grant to a natural person, or to make any grant, loan, compensation, or other similar payment (as described in section 4958(c)(2) of the Code) to a donor, donor-advisor, or related person with respect to the donor advised fund from which the distribution that is the subject of the agreement is made.

§ 53.4966–6 Applicability date.

Applicability date. The rules of §§ 53.4966–1 through 53.4966–5 apply to taxable years ending on or after [the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**].

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2023–24982 Filed 11–13–23; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[EPA–HQ–OLEM–2020–0107; FRL–7814–05–OLEM]

RIN 2050–AH14

Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy CCR Surface Impoundments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability (NODA).

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is announcing the availability of new information and data pertaining to the Agency's May 18, 2023 proposed rulemaking on the Disposal of Coal Combustion Residuals (CCR) from Electric Utilities; Legacy CCR Surface Impoundments. EPA is seeking public comment on this additional information, which may affect the Agency's decisions as it develops a final rule. EPA is not reopening any other aspect of the proposal, the CCR regulations, or the underlying support documents that were previously available for comment.

DATES: Comments must be received on or before December 11, 2023.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OLEM–2020–0107, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, OLEM Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. to 4:30 p.m., Monday through Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions concerning this notice of data availability, Michelle Lloyd, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, MC: 5304T, Washington, DC 20460; telephone number: (202) 566–0560; email address: *Lloyd.Michelle@epa.gov.* For more information on this rulemaking please visit *https://www.epa.gov/coalash.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Docket

EPA has established a docket for this action under Docket ID No. EPA–HQ–OLEM–2020–0107. All documents in the docket are listed in the *https://www.regulations.gov* index. Publicly available docket materials are available either electronically at *https://www.regulations.gov* or in hard copy at the EPA Docket Center. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

B. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2020–0107, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). Please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full EPA public comment policy; information about DBI, PBI, or multimedia submissions; and general guidance on making effective comments.

II. General Information

A. Does this action apply to me?

This document applies to and may affect all CCR generated by electric utilities and independent power producers that fall within the North American Industry Classification System (NAICS) code 221112. The reference to NAICS code 221112 is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This discussion lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not described here could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in 40 CFR 257.50 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What is the purpose of this NODA?

With this document, EPA is reopening the comment period on the proposed rule: Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy CCR Surface Impoundments (88 FR 31982, May 18, 2023), herein referred to as the "2023 proposed rule," for the limited purpose of obtaining public comment on additional information that may be relevant to the development of a final rule. Some of the information includes data or analyses that were received during the comment period for the 2023 proposed rule and that could have the potential to play a role in support of decisions in the final rule. It also includes information obtained based on further EPA research conducted both during and after the close of the comment period, and which was therefore not available for public comment during the prior comment period on the 2023 proposed rule. This document describes some new information and data that EPA has received and new analyses that have been conducted. All the information subject to this document can be accessed as described in Unit II.C of this document.

EPA is still in the process of evaluating this information and deliberating the provisions of a final rule. Therefore, EPA cannot definitively state whether this information will provide support for any provision of the final rule, or that the Agency has determined that it is appropriate to rely on this information in developing the final rule. In addition, it should not be assumed that the specific information identified in this document is the full sum of information received in comments that will be considered or that will influence the Agency's decisions in this rulemaking. However, in the interests of ensuring that the public has had a full and complete opportunity to comment on the information that EPA has so far identified as having the potential to weigh in EPA's decisions on the final rule, EPA is reopening the comment period for the limited purpose of allowing the public to comment on the validity and propriety of using this information, data, and potential analyses in developing the final rule. EPA is not reopening the comment period on any other aspect of the proposed rule. This is not an opportunity for the public to supplement their comments on the proposed rule, or to raise issues that could have been raised during the original comment period. The only issues on which the Agency is soliciting comment relate to the information in the docket supporting this document. Comments submitted on any issues other than those specifically identified in this document will be considered "late comments" on the proposed rule. EPA will not respond to such comments, and they will not be considered part of the rulemaking record.

C. Where can the information identified in the document be found?

Most documents are available from the docket for viewing and downloading through *http://www.regulations.gov;* however, copyrighted documents are only available for viewing by visiting EPA's Docket Center.

D. What is the Agency's authority for taking this action?

EPA is publishing this document under the authority of sections 1008(a), 2002(a), 4004, and 4005(a) and (d) of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016, 42 U.S.C. 6907(a), 6912(a), 6944, and 6945(a) and (d).

III. Background

On April 17, 2015, EPA finalized national minimum criteria for the disposal of CCR as solid waste under Subtitle D of the Resource Conservation and Recovery Act (RCRA) in a rule titled, ''Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities,'' (80 FR 21302) (2015 CCR rule or CCR regulations). The 2015 CCR rule, codified in subpart D of part 257 of Title 40 of the Code of Federal Regulations, established regulations for existing and new CCR landfills and existing and new CCR surface impoundments and all lateral expansions of CCR units. The criteria consist of location restrictions, design and operating criteria, groundwater monitoring and corrective action requirements, closure and post-closure care requirements, recordkeeping, notification and internet posting requirements.

The 2015 CCR rule imposed requirements on inactive surface impoundments [1] at active facilities,[2] but did not impose requirements on inactive surface impoundments at inactive facilities. The preamble to the 2015 CCR rule (80 FR 21344, April 17, 2015) explained that inactive units at inactive facilities were not covered by the rule in part due to possible complications that were specific to inactive or closed facilities: the concern that the present owner of the land on which an inactive site was located might have no connection (other than present ownership of the land) with the prior disposal activities. For that reason, EPA exempted those units at § 257.50(e). On August 21, 2018, the U.S. Court of Appeals for the District of Columbia Circuit issued its opinion in the case of *Utility Solid Waste Activities Group, et al.* v. *EPA* (''*USWAG*''), which vacated and remanded the provision that exempted inactive impoundments at inactive facilities from the CCR regulations.

On May 18, 2023, EPA proposed revisions to the CCR regulations (88 FR 31982). These revisions included establishing regulations specifying that inactive surface impoundments at inactive facilities (''legacy CCR surface impoundments'') are subject to 40 CFR part 257, subpart D and requiring owners and operators of legacy CCR surface impoundments to comply with all the appropriate requirements applicable to inactive CCR surface impoundments at active facilities. In addition, EPA proposed to establish requirements to address the risks from currently exempt solid waste management that involves the direct placement of CCR on the land. EPA proposed to extend a subset of the existing requirements in 40 CFR part 257, subpart D to CCR surface impoundments and landfills that closed prior to the effective date of the 2015 CCR Rule, inactive CCR landfills, and other areas where CCR is managed directly on the land. In the proposal, EPA referred to these as CCR management units, or CCRMU. This proposal would apply to all existing CCR facilities and all inactive facilities with legacy CCR surface impoundments. Lastly, EPA proposed to make several technical corrections to the CCR regulations. These are (1) to clarify the definitions of ''feasible'' and ''technically feasible''; (2) to correct the CFR reference in the definition of wetlands at § 257.61(a); (3) to correct a reference in the groundwater monitoring scope section; (4) to standardize the references to CCR websites throughout the CCR regulations; and (5) EPA requested comment on extending the period for document retention and posting.

The Agency received over 33,500 comments on the proposed rule, with over 600 unique comments. Commenters included individual electric utilities and independent power producers, national trade associations, state agencies, public interest and environmental groups, and entities involved with the beneficial use of CCR. All public comments submitted in response to the proposal can be found in the docket for the proposed rule.

IV. What information is EPA seeking?

A. Risk Analysis

In response to public comments and additional information made available since publication of the 2023 proposed rule, EPA has prepared a supplemental risk assessment in support of the 2023 proposed rule. This risk assessment builds on the findings of the previous 2014 Risk Assessment [3] and better quantifies the specific risks that may result from placement of CCR in legacy CCR surface impoundments and CCRMU. To accomplish this task, EPA used mathematical models to estimate the rate at which constituents may escape into surrounding media, the fate and transport of these constituents through the environment, and the potential risk of adverse effects to individual receptors that may occur in the absence of regulation. This supplemental risk assessment incorporates much of the same groundwater data and model framework as the 2014 Risk Assessment, updated where necessary to best reflect the relevant exposure scenarios. Additionally, this supplemental risk assessment considers additional exposure scenarios that may result from radionuclides present within CCR. EPA is requesting comment on all aspects of the assessment including the validity and propriety of relying on the new information, data, and analyses contained in the updated risk assessment to inform the final rule.

B. Information About Legacy CCR Surface Impoundments and CCR Management Units

EPA is also seeking information that would further document the universe of legacy CCR surface impoundments and CCRMU. In response to the *USWAG* decision, EPA issued an ANPRM on October 14, 2020 (85 FR 65015) to solicit comment and data on legacy CCR surface impoundment at inactive facilities to assist in the development of future regulations for legacy CCR surface impoundments. EPA received 156 comments on the ANPRM regarding the presence, condition, and history of potential legacy CCR surface impoundments of which, 127 cited the sources of the information. EPA placed the data on these potential legacy CCR surface impoundments in the docket of the 2023 proposed rule for legacy CCR surface impoundments (88 FR 31982, May 18, 2023) and requested further comments and data on these units as well as any CCRMU. In response to the 2023 proposed rule, EPA received additional comments regarding the location, presence, condition, and history of additional potential legacy CCR surface impoundments and of CCRMU at both active and inactive

[1] An ''inactive CCR surface impoundment'' is defined at § 257.53 as a CCR surface impoundment that no longer received CCR on or after October 19, 2015 and still contains both CCR and liquids on or after October 19, 2015.

[2] An ''active facility or active electric utilities or independent power producers'' is defined at § 257.53 as any facility subject to the requirements of this subpart that is in operation on October 19, 2015. An electric utility or independent power producer is in operation if it is generating electricity that is provided to electric power transmission systems or to electric power distribution systems on or after October 19, 2015. An off-site disposal facility is in operation if it is accepting or managing CCR on or after October 19, 2015.

[3] U.S. EPA. 2014a. ''Final Human and Ecological Risk Assessment of Coal Combustion Residuals.'' RIN: 2050–AE81. Prepared by the EPA Office of Solid Waste and Emergency Response. Washington, DC. December.

facilities. EPA is placing the data received in response to the proposed rule in the docket for the present NODA and is soliciting public comment on these data in connection with this rulemaking.

EPA is specifically soliciting supplementary comments, data, or sources of information on the location, presence, condition, history, and risk associated with any of the potential legacy CCR surface impoundments or any of the potential CCRMU within the docket, including any information regarding the presence of water, distance to surface water bodies, proximity to floodplains, unit size, CCR volume, depth to groundwater, date of CCR placement, closure status, any corrective action associated with the unit, and any groundwater monitoring data. In addition to information regarding the docket items for this NODA, EPA also requests comment on the accuracy of the information that was submitted regarding potential legacy CCR surface impoundments or potential CCRMU. Furthermore, EPA is seeking similar information on any other potential legacy CCR surface impoundments or potential CCRMU of which EPA may not be aware or for which we may have incomplete information. In all instances, it is important that commenters on this NODA provide verifiable sourcing information for data that is provided, as EPA may not consider information without a verifiable source in developing a final rule.

The information included in the docket for this NODA is in PDFs and Microsoft Excel spreadsheets. While some of the information in the PDFs and the Microsoft Excel spreadsheets is duplicative, the docket items contain distinct data.

V. Request for Comment and Additional Information

EPA is seeking comment on all questions and topics described in this NODA, including the issues identified in Unit IV of this document, and requests that you submit any information, that you believe is important for EPA to consider in connection with these questions and topics. At the same time, EPA will not consider comments that are beyond the scope of the questions and topics described in this NODA.

Instructions for providing written comments are provided under **ADDRESSES**, including how to submit any comments that contain CBI.

List of Subjects in 40 CFR Part 257

Environmental protection, Coal combustion products, Coal combustion residuals, Coal combustion waste, Disposal, Hazardous waste, Landfill, Surface impoundment.

Michael S. Regan,

Administrator.

[FR Doc. 2023–24941 Filed 11–13–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 675

[Docket No. FTA–2023–0018]

RIN 2132–AB46

Transit Worker Hours of Service and Fatigue Risk Management Virtual Listening Session

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Proposed rule; public meeting.

SUMMARY: The Federal Transit Administration (FTA) will hold a virtual public listening session concerning the topics of hours of service and fatigue risk management for transit workers on December 5, 2023. On October 30, 2023, FTA published an Advance Notice of Proposed Rulemaking (ANPRM) seeking public input on those topics. The virtual listening session will allow all interested persons an opportunity to present comments, views, and relevant research on those topics in addition to providing written comments to the docket. A transcript will be placed in the rulemaking docket for public inspection.

DATES: The webinar will be held on December 5, 2023, from 2:30 p.m. to 3:45 p.m. ET.

ADDRESSES: The listening session will be held virtually. Interested parties should register in advance at *https://usdot.zoomgov.com/j/1608968545?pwd=c0tVNlJ3OTRPUmxYTHN4STFZczNYQT09.*

Access information and codes will be provided to those groups and interested members of the public who register for the event. The total number of participants in the virtual listening session will be limited to the maximum allowed by the live webcast platform.

FOR FURTHER INFORMATION CONTACT: For information on the listening session, contact Valerie Beck, Office of Transit Safety and Oversight, FTA, telephone at (202) 366–9178 or *valerie.beck@dot.gov.* Office hours are from 7:30 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

On October 30, 2023, FTA published in the **Federal Register** (Docket No. FTA–2023–0018, 88 FR 74107) an Advance Notice of Proposed Rulemaking (ANPRM) seeking public input in two areas: (1) hours of service; and (2) fatigue risk management programs. At present, there are no Federal minimum standards for hours of service and fatigue risk management programs in the transit industry. FTA held an in-person listening session on October 8, 2023, in Orlando, Florida. The virtual listening session will allow additional interested persons to present comments, views, and relevant research on those topics. FTA seeks information to better understand current industry practices, priorities, requirements, and the costs and benefits of Federal requirements.

II. Meeting Participation

The listening session is open to the public.

III. Registration

The session will be held virtually. Interested parties should register in advance at *https://usdot.zoomgov.com/j/1608968545?pwd=c0tVNlJ3OTRPUmxYTHN4STFZczNYQT09.*

(Authority: 49 U.S.C. 5329; 49 CFR 1.91)

Joseph P. DeLorenzo,

Associate Administrator for Transit Safety and Oversight.

[FR Doc. 2023–25052 Filed 11–13–23; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 231107–0264]

RIN 0648–BM55

Fisheries of the Northeastern United States; Mid-Atlantic Blueline Tilefish and Golden Tilefish Fisheries; 2024 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: In this action, NMFS proposes to maintain status quo harvest limits for the 2024 golden tilefish and blueline tilefish fisheries north of the North Carolina/Virginia border, to shift the recreational season for blueline tilefish to May 15 through November 14, and to modify regulations to reflect the January 1 start date of the golden tilefish fishing year. The proposed action is necessary to establish allowable harvest levels and other management measures to prevent overfishing while allowing optimum yield, consistent with the Magnuson-Stevens Fishery Conservation and Management Act and the Tilefish Fishery Management Plan.

DATES: Comments must be received on December 14, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2023–0121, by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2023–0121 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of the supporting documents for these proposed specifications are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. These documents are also accessible via the internet at *https://www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Douglas Potts, *douglas.potts@noaa.gov,* 978–281–9241.

SUPPLEMENTARY INFORMATION:

Background

The golden tilefish and blueline tilefish fisheries north of the North Carolina/Virginia border are managed by the Mid-Atlantic Fishery Management Council (the Council) under the Tilefish Fishery Management Plan (FMP), which outlines the Council's process for establishing annual specifications. The Tilefish FMP requires the Council to recommend acceptable biological catch (ABC), annual catch limit (ACL), annual catch target (ACT), total allowable landings (TAL), and other management measures for the commercial and recreational sectors of the fisheries. The Council's Scientific and Statistical Committee (SSC) provides ABC recommendations for both species to the Council to derive these catch limits. The Council makes recommendations to NMFS that cannot exceed the recommendation of its SSC. The Council's recommendations must include supporting documentation concerning the environmental, economic, and social impacts of the recommendations. We are responsible for reviewing these recommendations to ensure that they achieve the FMP objectives and are consistent with all applicable laws. Following review, NMFS publishes the final specifications in the **Federal Register**.

Proposed Specifications

The proposed 2024 specifications for blueline and golden tilefish are detailed in Tables 1 and 2. These values are status quo from 2023 and are unchanged from the projected 2024 specifications we previously announced in the final rule for the 2022–2024 Blueline Tilefish Specifications (87 FR 66245, November 3, 2022) and the final rule for Framework Adjustment 7 to the Tilefish FMP (87 FR 67830, November 10, 2022).

TABLE 1—PROPOSED BLUELINE TILEFISH 2024 SPECIFICATIONS

ABC—North of NC/VA line	100,520 lb (45.6 mt).
Recreational ACL/ACT	73,380 lb (33.3 mt).
Commercial ACL/ACT	27,140 lb (12.3 mt).
Recreational TAL	71,912 lb (32.6 mt).
Commercial TAL	26,869 lb (12.2 mt).

TABLE 2—PROPOSED GOLDEN TILEFISH 2024 SPECIFICATIONS

ABC	1,964,319 lb (891 mt).
ACL	1,964,319 lb (891 mt).
IFQ fishery ACT	1,763,478 lb (800 mt).
Incidental fishery ACT	92,815 lb (42 mt).
IFQ fishery TAL = IFQ ACT (no discards permitted in fishery)	1,763,478 lb (800 mt).
Incidental fishery TAL = Incidental fishery ACT—discards	75,410 lb (42 mt).

This action would not change the landing limits for the commercial fisheries. A vessel fishing under a Federal commercial tilefish vessel permit would continue to be prohibited from possessing more than 500 pounds (lb) (227 kilograms (kg)) of gutted golden tilefish at any time, or 50 percent, by weight, of the total of all species, including golden tilefish, being landed (whichever is less). This landing limit does not apply to a vessel authorized to land golden tilefish under a Tilefish IFQ permit. A vessel fishing under a commercial tilefish permit would also continue to be prohibited from possessing more than 500 lb (227 kg) of gutted blueline tilefish per trip. If 70 percent of the blueline tilefish commercial TAL is landed, the Regional Administrator may reduce the blueline tilefish possession limit to 300 lb (136 kg).

This action would not change the recreational management measures for golden or blueline tilefish, other than the season change discussed below. Any vessel used to fish recreationally for golden or blueline tilefish must have the appropriate Federal vessel permit. Boats used to take anglers for hire must have the Charter/Party Tilefish Permit while private recreational vessels need to have the Private Recreational Tilefish Permit. Both permit types require the submission of vessel trip reports. Additional information about permitting and reporting requirements is available from the Greater Atlantic Regional

Fisheries Office's Permits Office at (978) 282–8438 or *NMFS.GAR.Permits@noaa.gov.*

The golden tilefish recreational possession limit for charter/party and private recreational anglers is 8 golden tilefish per angler per trip. Anglers may not retain golden tilefish unless exclusively using rod and reel fishing gear with a maximum limit of 5 hooks per rod. The blueline tilefish recreational possession limit depends on the type of fishing vessel. Anglers fishing from a private vessel that has been issued a valid Federal Tilefish Private Recreational Permit are allowed to keep up to 3 blueline tilefish per person per trip. Anglers fishing from a for-hire vessel that has been issued a valid Federal Tilefish Party/Charter Permit but does not have a current U.S. Coast Guard safety inspection sticker can retain up to 5 blueline tilefish per person per trip. Finally, anglers on for-hire vessels that have both a valid Federal Tilefish Party/Charter Permit and a current U.S. Coast Guard safety inspection sticker can retain up to 7 blueline tilefish per person per trip.

The 2024 fishing year for golden tilefish and blueline tilefish will begin on January 1, 2024. The regulations include rollover provisions for both species that would allow the fisheries to operate under status quo specifications if this action is not finalized before then.

Blueline Tilefish Recreational Season

At its June 2023 meeting, the MAFMC voted to recommend changing the recreational season for blueline tilefish from May 1 through October 31 to May 15 through November 14. The Council had received feedback from participants in this fishery suggesting the recreational blueline tilefish season be shifted forward by about 2 weeks to better match the recreational black sea bass season in most states. In some areas, anglers report it is common to catch black sea bass when targeting blueline tilefish or to stop and target black sea bass on their way out to blueline tilefish fishing grounds. Therefore, the recommendation was intended to better align the blueline tilefish season with the black sea bass season in most states in an effort to minimize regulatory black sea bass discards as well as to help control temporal efforts on both fisheries. A review of both angler feedback as well as vessel trip report data from for-hire vessels suggests shifting the recreational blueline tilefish season to May 15 to November 14 would help reduce black sea bass discards with minimal impact on the blueline tilefish recreational fishery and would result in no change to the number of days of the current blueline tilefish recreational season.

Corrections

The final rule to implement Framework Adjustment 7 to the Tilefish FMP (87 FR 67830, November 10, 2022) moved the start of the fishing year for golden tilefish from November 1 to January 1. However, the rule did not change the following ancillary dates in the regulations that derive from the start of the fishing year, including: the date by which an Individual Fishing Quota (IFQ) permit application must be submitted to ensure the IFQ permit is issued before the start of the fishing year; the date when an IFQ permit ceases to be valid (*i.e.,* the last day of the fishing year); and the cut-off date for submitting an IFQ transfer application for the current fishing year. This rule proposes to adjust those dates in the regulations based on January 1 being the start of the fishing year.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Tilefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The 2024 harvest quotas in this rule are status quo and were previously certified not to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act during the rulemaking for the 2022–2024 Specifications for the Blueline Tilefish Fishery (87 FR 66245, November 3, 2022) and Framework Adjustment 7 to the Tilefish Fishery Management Plan (87 FR 67830, November 10, 2022). No comments were received that would change those previous certifications.

The new management measures proposed by this action apply to vessel owners participating in the recreational blueline tilefish fishery. A total of 535 affiliates had a federal party/charter permit for tilefish during 2020–2022.

For Regulatory Flexibility Act purposes, NOAA's National Marine Fisheries Service has established a size standard for small businesses, including their affiliated operations, whose primary industry is commercial fishing (*see* 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as small if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11.0 million for all its affiliated operations worldwide. The Small Business Administration has established size standards for all other major industry sectors in the U.S., including defining for-hire fishing firms (NAICS code 487210) as small when their receipts are less than or equal to $8 million. All of the 535 affiliates with Federal party/charter permits were categorized as small businesses based on their average 2018–2022 revenues. Of these, 249 affiliates reported that the majority of their revenues in 2022 came from for-hire fishing.

The proposed recreational season for blueline tilefish would not result in a change to the number of fishing days and is unlikely to significantly affect the timing of when anglers can fish for this species. The proposed change would not likely result in a change in the number of for-hire trips, for-hire revenues, or overall impacts to recreational for-hire businesses, assuming all other factors which affect revenues remain unchanged, and, as a result, this action will not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 7, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 648 as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.294, revise paragraphs (b)(1)(ii), (b)(2) and (3), and (e)(4) to read as follows:

§ 648.294 Golden tilefish individual fishing quota (IFQ) program.

* * * * *

(b) * * *

(1) * * *

(ii) *Renewal applications.* Applications to renew an IFQ allocation permit must be received by November 15 to be processed in time for the January 1 start of the next fishing year. Renewal applications received after this date may not be approved, and a new permit may not be issued before the start of the next fishing year. An IFQ allocation permit holder must renew his/her IFQ allocation permit on an annual basis by submitting an application for such permit prior to the end of the fishing year for which the permit is required. Failure to renew an IFQ allocation permit in any fishing year will result in any IFQ quota share held by that IFQ allocation permit holder to be considered abandoned and relinquished.

(2) *Issuance.* Except as provided in subpart D of 15 CFR part 904, and provided an application for such permit is submitted by November 15, as specified in paragraph (b)(1)(ii) of this section, NMFS shall issue annual IFQ allocation permits on or before December 31 to those who hold IFQ quota share as of November 1 of the current fishing year. From November 1 through December 31, permanent transfer of IFQ quota share is not permitted, as described in paragraph (e)(4) of this section.

(3) *Duration.* An annual IFQ allocation permit is valid until December 31 of each fishing year unless it is suspended, modified, or revoked pursuant to 15 CFR part 904; revised due to a transfer of all or part of the IFQ quota share or annual IFQ allocation under paragraph (e) of this section; or suspended for non-payment of the cost recovery fee as described in paragraph (h)(4) of this section.

* * * * *

(e) * * *

(4) *Application for an IFQ allocation transfer.* Any IFQ allocation permit holder applying for either permanent transfer of IFQ quota share or temporary transfer of annual IFQ allocation must submit a completed IFQ Allocation Transfer Form, available from NMFS. The IFQ Allocation Transfer Form must be submitted to the NMFS Greater Atlantic Regional Fisheries Office at least 30 days before the date on which the applicant desires to have the IFQ allocation transfer effective. The Regional Administrator shall notify the applicants of any deficiency in the application pursuant to this section. Applications for permanent IFQ quota share allocation transfers must be received by November 1 to be processed and effective before annual IFQ allocations are issued for the next fishing year. Applications for temporary IFQ allocation transfers must be received by December 10 to be processed for the current fishing year.

* * * * *

■ 3. In § 648.296, revise paragraph (b) introductory text to read as follows:

§ 648.296 Tilefish recreational possession limits and gear restrictions.

* * * * *

(b) *Blueline tilefish.* The recreational blueline tilefish fishery is open May 15 through November 14, and closed November 15 through May 14.

* * * * *

[FR Doc. 2023–25064 Filed 11–13–23; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 88, No. 218

Tuesday, November 14, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; National Survey of Children's Health

AGENCY: U.S. Census Bureau, Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment on the proposed revision of the National Survey of Children's Health, prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before January 16, 2024.

ADDRESSES: Interested persons are invited to submit written comments by email to *ADDP.NSCH.List@census.gov.* Please reference National Survey of Children's Health in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2023–0011, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Leah Meyer, Assistant Survey Director, by way of phone (301–763–7174) or email (*Leah.Meyer@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

Sponsored primarily by the U.S. Department of Health and Human Services' Health Resources Services Administration's Maternal and Child Health Bureau (HRSA MCHB), the National Survey of Children's Health (NSCH) is designed to produce data on the physical and emotional health of children under 18 years of age who live in the United States. The United States Department of Agriculture (USDA), the United States Department of Health and Human Services' Centers for Disease Control and Prevention (CDC), the National Center on Birth Defects and Developmental Disabilities (CDC–NCBDDD), and the Division of Nutrition, Physical Activity, and Obesity (CDC–DNPAO) sponsor supplemental content on the NSCH. Additionally, the upcoming cycle of the NSCH plans to include fifteen (15) age, state, or regional oversamples. The age-based oversample would be funded by the United States Department of Health and Human Services' Center for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion (CDC–NCCDPHP). The state- or region-based oversamples would be sponsored by Children's Health Care of Atlanta, the State of California, the State of Colorado, the State of Illinois, the State of Kansas, the State of Louisiana, the State of Minnesota, the State of Nebraska, the State of Ohio, the State of Pennsylvania, the State of South Carolina, the State of Utah, the State of Wisconsin, and the State of Wyoming.

The NSCH collects information on factors related to the well-being of children, including access to health care, in-home medical care, family interactions, parental health, school and after-school experiences, and neighborhood characteristics. The goal of the 2024 NSCH is to provide HRSA MCHB, the supplemental sponsoring agencies, states, regions, and other data users with the necessary data to support the production of national estimates yearly and state- or region-based estimates with pooled samples on the health and well-being of children, their families, and their communities as well as estimates of the prevalence and impact of children with special health care needs. The MCHB sponsored NSCH sample plus the separately sponsored age-, state- or region-based oversamples will be approximately 385,000 addresses for the 2024 NSCH.

NSCH is seeking clearance to make the following changes:

• *Revised questionnaire content*—Newly proposed and revised NSCH content from the sponsors at HRSA MCHB is currently undergoing cognitive testing. This testing request was submitted under the generic clearance package and approved by OMB.[1] Based on the results, a list of modified content will be included in the full OMB ICR for the 2024 NSCH.

• *Oversamples*[2]—In order to inform various priorities that are otherwise not supported by the NSCH, some stakeholders have shown interest in sponsoring an oversample of particular populations as part of the annual NSCH administration. Currently, there are thirteen (13) states and one region contributing to an oversample as part of the 2024 NSCH. Eight (8) states (California, Colorado, Louisiana, Nebraska, Ohio, Pennsylvania, Wisconsin, and Wyoming) and the Atlanta, GA Metro Area, have been oversampled since 2020 and are continuing with the option as part of the 2024 NSCH. Three (3) additional states (Kansas, Illinois, and Minnesota) were included in oversample in 2023 and will continue with the option as part of the 2024 NSCH, and two (2) additional

[1] Generic Clearance Information Collection Request: *https://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=202209-0607-002&icID=260679.*

[2] State Oversampling in the National Survey of Children's Health: Feasibility, Cost, and Alternative Approaches *https://census.gov/content/dam/Census/programs-surveys/nsch/NSCH_State_Oversample_Summary_Document.pdf.*

states (South Carolina and Utah) will be oversampled for the first time in 2024. CDC–NCCDPHP is supporting an oversample of households with young children. Additionally, MCHB is requesting oversamples within the states of California, Colorado, Illinois, Kansas, Louisiana, Nebraska, Ohio, Pennsylvania, South Carolina, Utah, Wisconsin, and Wyoming.

Besides the proposed changes listed above, the 2024 NSCH will proceed with the current design outlined in the previous OMB ICR package, including the use of incentives. Response rates for the unconditional monetary incentive group continues to show a statistically significant difference over the control group that did not receive an unconditional monetary incentive. As part of the initial screener mailing, 90% will include $5 and 10% will not receive an incentive. The incentive assignment to each sampled address would still be random as was done in prior cycles and approved by OMB. For those households that are eligible for an initial paper topical mailing, the package will include an additional $5 incentive. Additional incentives and mailing strategies may be used to both reduce nonresponse bias and improve response rates per request of the sponsor and as funding allows. We will continue to make modifications to data collection strategies based on modeled information about paper or internet response preference. Results from prior survey cycles will continue to be used to inform the decisions made regarding future cycles of the NSCH.

From prior cycles of the NSCH, using American Association for Public Opinion Research definitions of response, we can expect for the 2024 NSCH an overall screener completion rate to be about 44.4% and an overall topical completion rate to be about 31.3%.[3] This is different from the overall response rate, which we expect to be about 39.3%.[4]

[3] Screener Completion Rate is the proportion of screener-eligible households (*i.e.,* occupied residences) that completed a screener. It is equal to (S+X)/(S+X+R+e(UR+UO)), where S is the count of completed screeners with children, X is completed screeners without children, R is screener refusals, and e(UR+UO) is the estimated count of screener eligible households among nonresponding addresses.

The Topical Completion Rate is the proportion of topical-eligible households (*i.e.,* occupied residences with children present) that completed a topical questionnaire. It is equal to I/HCt, where I is the count of completed topicals and HCt is the estimated count of households with children in the sample or S+R+(S+R)/(S+X+R)*e(UR+UO).

[4] Overall Response Rate is the probability a resolved address completes a screener questionnaire and then, when eligible, completes a topical questionnaire.

II. Method of Collection

The 2024 NSCH plan for the web push data collection design includes approximately 70% of the production addresses receiving an initial invite with instructions on how to complete an English or Spanish-language screener questionnaire via the web. Households that decide to complete the web-based survey will be taken through the screener questionnaire to determine if they are eligible for one of three topical instruments. Households that list at least one child who is 0 to 17 years old in the screener are directed into a topical questionnaire immediately after the last screener question. If a household in the web push treatment group decides to complete the paper screener, the household will receive an additional topical questionnaire incentive. This group will receive two web survey invitation letters requesting their participation in the survey prior to receiving up to two additional paper screener questionnaires in the second and third follow-up mailings.

The 2024 NSCH plan for the mixed-mode data collection design includes up to 30% of the production addresses receiving a paper screener questionnaire in the initial mailing with instructions on how to complete an English or Spanish language screener questionnaire via the web as well. Households that decide to complete the web-based survey will follow the same screener and topical selection path as the web push. Households that choose to complete the paper screener questionnaire rather than completing the survey on the internet and that have eligible children will be mailed a paper topical questionnaire upon receipt of their completed paper screener at the Census Bureau's National Processing Center. If a household in the mixed-mode group chooses to complete the paper screener instead of completing the web-based screener via the internet, then the household will receive an additional topical questionnaire incentive. This group will receive both a web survey invitation letter along with a mailed paper screener questionnaire with either the initial invitation or the first follow-up and each additional nonresponse follow-up mailing.

III. Data

OMB Control Number: 0607–0990.

Form Number(s): NSCH–S1 (English Screener), NSCH–T1 (English Topical for 0- to 5-year-old children), NSCH–T2 (English Topical for 6- to 11-year-old children), NSCH–T3 (English Topical for 12- to 17-year-old children), NSCH–S–S1 (Spanish Screener), NSCH–S–T1 (Spanish Topical for 0- to 5-year-old children), NSCH–S–T2 (Spanish Topical for 6- to 11-year-old children), and NSCH–S–T3 (Spanish Topical for 12- to 17-year-old children).

Type of Review: Regular submission, Request for a Revision of a Currently Approved Collection.

Affected Public: Parents, researchers, policymakers, and family advocates.

Estimated Number of Respondents: 132,402.

Estimated Time per Response: 5 minutes per screener response and 35–36 minutes per topical response, which in total is approximately 40–41 minutes for households with eligible children.

Estimated Total Annual Burden Hours: 49,431.

Estimated Total Annual Cost to Public: $0 (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. 8(b); 42 U.S.C. 701; 42 U.S.C. 1769d(a)(4)(B); and 42 U.S.C. 241.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–25017 Filed 11–13–23; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Longitudinal Employer-Household Dynamics (LEHD)

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment on the proposed revision of the Longitudinal Employer-Household Dynamics data collection, prior to the submission of the information collection request to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before January 16, 2024.

ADDRESSES: Interested persons are invited to submit written comments by email to *adrm.pra@census.gov.* Please reference Longitudinal Employer-Household Dynamics (LEHD) in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2023–0012, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Keith Bailey, Assistant Center Chief, 301–763–2923, and *keith.a.bailey@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

A 21st century statistical system must provide information about the dynamic economy quickly, using data assets efficiently while minimizing the burden of collecting and providing data and fully preserving confidentiality. The Census Bureau's Longitudinal Employer-Household Dynamics (LEHD) data infrastructure has demonstrated the power and usefulness of linking multiple business and employee data sets with state-of-the-art confidentiality protections to build a longitudinal national frame of jobs.

LEHD supports the Department of Commerce plan to improve American competitiveness and measures of innovation. It provides Federal, State, and local policymakers and planners, businesses, private sector decision makers, and Congress with comprehensive and timely national, State, and local information on the dynamic nature of employers and employees.

LEHD significantly reduces the overall effort for the generation of its quarterly data product by:

- Leveraging existing Federal administrative and State data
- Avoiding costs required to expand existing surveys to collect the information directly
- Reducing respondent burden by limiting the number of required resources to just the owners of the required data

LEHD is a result of the Local Employment Dynamics (LED) Partnership. The LED Partnership is a partnership between the US Census Bureau and the Labor Market Information (LMI) agencies from 50 States, the District of Columbia, and the territories of Puerto Rico, Guam and the U.S. Virgin Islands. This partnership supports the development, promotion, and distribution of the following public-use data products:

- Quarterly Workforce Indicators (QWI)—LEHD's flagship data product is the Quarterly Workforce Indicators (QWI) which provides 32 statistical indicators on employment, job creation and destruction, accessions (hires and recalls), and separations (*e.g.,* exits and layoffs). These statistics are released for the following by-groups for all quarters for which data are available for each partner State:
  - County, metropolitan, and workforce development area
  - Age, sex, race, and ethnicity categories
  - Business characteristics (*i.e.,* detailed industry ownership type, firm age, firm size)
- LEHD Origin Destination Employment Statistics (LODES)—LODES data provide detailed spatial distributions of workers' employment and residential locations and the relation between the two at the Census Block level. LODES also provides characteristic detail on age, earnings, industry distributions, and other worker/business characteristics.
- Job-to-Job Flows (J2J)—Job-to-Job Flows (J2J) is a set of statistics on job mobility in the United States constructed by the LEHD program. J2J include statistics on: (1) the job-to-job transition rate, (2) hires and separations to and from employment, (3) earnings changes due to job change, and (4) characteristics of origin and destination jobs for job-to-job transitions. These statistics are available at the national, State, and metropolitan area levels and by worker and firm characteristics.
- Post-Secondary Employment Outcomes (PSEO)—Post-Secondary Employment Outcomes (PSEO) is an experimental set of statistics on the earnings and employment outcomes of graduates of select post-secondary institutions in the United States, and is constructed using data from LEHD. Earnings Outcomes reports earnings by institution, degree field, degree level and graduation cohort for 1, 5 and 10 years after graduation. Employment Flows tabulations provide the destination industry and geography of employment for graduates of an institution by degree level, degree field, and graduation cohort, for one, five, and 10 years after graduation. A limited number of institutions are available as part of the pilot release, but future updates will include additional post-secondary institutions.

These data products highlight state and local labor market dynamics that cannot be learned from other statistical sources and are therefore used in many different arenas. For example, the QWI can be used as local-labor-market controls in regression analysis; to identify long-term trends; to provide local context in performance evaluations; and for a host of other applications.

II. Method of Collection

The collection of data occurs in accordance with the rules established by interagency agreements with the participating State partners or data sharing agreements that have been established within the Census Bureau. For State partners, their data is submitted directly to the Census secure servers where Personally Identifiable Information (PII) goes through a process to replace it with Protected Identification Keys (PIK). This PVS (Person Identification Validation System) process also applies to all other administrative data that are used in the LEHD infrastructure. For all other required administration data, they are transferred or referenced by the LEHD production system. Data collection and processing also includes activities such as validation of data quality.

LEHD's data products are not generated by a traditional survey. Rather, all input data required is collected electronically as follows:

• State Unemployment Insurance (UI) and Quarterly Census of Employment and Wages (QCEW) are provided via encrypted File Transfer Protocol (FTP) through which each State LMI agency sends these data directly to the Census Bureau. This transfer of data is governed by Memorandum of Understandings (MOUs) with each State partner.

• Federal and Census Administrative data are acquired from other directorates or divisions within the Census Bureau with which an internal agreement has been established for the use of the data.

• Public Use data sets are acquired from publicly available websites or public File Transfer Protocol (FTP) servers.

Data that is used in LEHD infrastructure are defined in the following table.

TABLE III–1—INPUT DATA SETS FOR THE LEHD PROGRAM

File	Source	Delivery schedule	Number of respondents
American Housing Survey (AHS)	Census Bureau	Yearly	1
Business Dynamics Statistics (BDS)	Census Bureau	Annual	1
Quarterly Census of Employment and Wages (QCEW)	Bureau of Labor Statistics	Quarterly	1
Current Population Survey (CPS)	Census Bureau	Yearly	1
Federal Workers	Office of Personnel Management	Quarterly	1
Geographic Reference File	Census Bureau	Yearly	1
Master Address File Extract	Census Bureau	Yearly	1
New Business Register	Census Bureau	Yearly	1
Geographic Database	Pitney Bowes Corporation	Quarterly	1
Master Address File Auxiliary Reference File	Census Bureau	Yearly	1
Residence Candidate File	Census Bureau	Yearly	1
Survey of Income and Program Participation	Census Bureau	Yearly	1
Topologically Integrated Geographic Encoding and Referencing	Census Bureau	Yearly	1
W2 Records	Internal Revenue Service	Yearly	1
Unemployment Insurance Wage File	State Partners	Quarterly	54
Quarterly Census of Employment and Wages (QCEW)	State Partners	Quarterly	54
WDB Definitions files	State Partners	Acquired as needed.	54

III. Data

OMB Control Number: 0607–1001.

Form Number(s): Not applicable as survey forms are not required to collect this data.

Type of Review: Regular submission, Request for a Revision of a Currently Approved Collection.

Affected Public: Not-for-profit institutions; State, local, or Tribal government; Federal Government.

Estimated Number of Respondents: As defined in Table III–1 above.

Estimated Time per Response: No more than 8 hours required to identify and send/post required data sets.

Estimated Total Annual Burden Hours: 1728 hours.

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary via a Memorandum of Understanding (MOU).

Legal Authority: The authority to develop LEHD is 13 U.S.C. 6. Of course, confidentiality is assured by 13 U.S.C. 9.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–25021 Filed 11–13–23; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–57–2023]

Foreign-Trade Zone (FTZ) 61, Notification of Proposed Production Activity; AIAC International Pharma, LLC; (Pharmaceutical Products); Arecibo, Puerto Rico

AIAC International Pharma, LLC submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Arecibo, Puerto Rico within Subzone 61D. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on November 7, 2023.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.* The proposed finished product(s) and material(s)/component(s) would be added to the production authority that the Board previously approved for the operation, as reflected on the Board's website.

The proposed finished product is Janumet® XR tablets (sitagliptin and metformin hydrochloride extended release) (duty-free).

The proposed foreign-status material/component is metformin hydrochloride active pharmaceutical ingredient (duty-free).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is December 26, 2023.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov.*

Dated: November 7, 2023.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2023–24995 Filed 11–13–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–214–2023]

Foreign-Trade Zone 26; Application for Subzone; Helena Industries, LLC; Cordele, Georgia

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by Georgina Foreign-Trade Zone, Inc., grantee of FTZ 26, requesting subzone status for the facilities of Helena Industries, LLC, located in Cordele, Georgia. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on November 8, 2023.

The proposed subzone would consist of the following sites: *Site 1* (33 acres) 434 Fenn Road, Cordele, Georgia; and, *Site 2* (9.2 acres) 1198 Highway 280, Cordele, Georgia. A notification of proposed production activity has been submitted and is being processed under 15 CFR 400.37 (Doc. B–54–2023). The proposed subzone would be subject to the existing activation limit of FTZ 26.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is December 26, 2023. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 8, 2024.

A copy of the application will be available for public inspection in the ''Online FTZ Information Section'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov.*

Dated: November 8, 2023.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2023–25050 Filed 11–13–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Rossiya Airlines, Pilotov St 18–4, St. Petersburg, Russia, 196210; Order Renewing Temporary Denial of Export Privileges

Pursuant to section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (''EAR'' or ''the Regulations''),[1] I hereby grant the request of the Office of Export Enforcement (''OEE'') to renew the temporary denial order (''TDO'') issued in this matter on May 12, 2023. I find that renewal of this order is necessary in the public interest to prevent an imminent violation of the Regulations and that renewal for an extended period is appropriate because Rossiya Airlines (''Rossiya'') has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR.

I. Procedural History

On May 20, 2022, I signed an order denying Rossiya's export privileges for a period of 180 days on the ground that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order was issued *ex parte* pursuant to Section 766.24(a) of the Regulations and was effective upon issuance.[2] The TDO was subsequently renewed on November 15, 2022[3] and again on May 12, 2023,[4] in accordance with section 766.24(d) of the Regulations.[5]

[1] On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (''ECRA''). While section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. app. 2401 *et seq.* (''EAA''), (except for three sections which are inapplicable here), section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.* (''IEEPA''), and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

[2] The TDO was published in the **Federal Register** on May 25, 2022 (87 FR 31856).

[3] The November 15, 2022 renewal order was published in the **Federal Register** on November 21, 2022 (87 FR 70780).

[4] The May 12, 2023 renewal order was published in the **Federal Register** on May 17, 2023 (88 FR 31483).

[5] At the time of the renewal, section 766.24(d) provided that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods, if it believes that renewal is necessary in

On October 18, 2023, BIS, through OEE, submitted a written request for a third renewal of the TDO. The written request was made more than 20 days before the TDO's scheduled expiration and, given the temporary suspension of international mail service to Russia, OEE has attempted to serve a copy of the renewal request on Rossiya in accordance with sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received.

II. Renewal of the TDO

A. Legal Standard

Pursuant to section 766.24, BIS may issue an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations, or any order, license or authorization issued thereunder. 15 CFR766.24(b)(1) and 766.24(d). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge ''is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]'' *Id.* A ''lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

If BIS believes that renewal of a denial order is necessary in the public interest to prevent an imminent violation, it may file a written request for renewal, with any modifications if appropriate. 15 CFR 766.24(d)(1). The written request, which must be filed no later than 20 days prior to the TDO's expiration, should set forth the basis for BIS's belief that renewal is necessary, including any additional or changed circumstances. *Id.* ''In cases demonstrating a pattern of repeated, ongoing and/or continuous apparent violations, BIS may request the renewal of a temporary denial order for an additional period not exceeding one year.'' [6] *Id.*

B. The TDO and BIS's Request for Renewal

The U.S. Commerce Department, through BIS, responded to the Russian Federation's (''Russia's'') further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia's access to technologies and other items that it needs to sustain its aggressive military capabilities. These controls primarily target Russia's defense, aerospace, and maritime sectors and are intended to cut off Russia's access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia's strategic ambitions to exert influence on the world stage. Effective February 24, 2022, BIS imposed expansive controls on aviation-related (*e.g.,* Commerce Control List Categories 7 and 9) items to Russia, including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control Classification Number (''ECCN'') 9A991 (section 746.8(a)(1) of the EAR).[7] BIS will review any export or reexport license applications for such items under a policy of denial. *See* section 746.8(b). Effective March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and Spacecraft (''AVS'') (section 740.15 of the EAR).[8] Accordingly, any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin content, and that is registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia, is subject to a license requirement before it can travel to Russia.

OEE's request for renewal for a period of one year is based upon the facts underlying the issuance of the initial TDO, the renewal orders subsequently issued in this matter, and evidence that continues to develop during this investigation. These facts and evidence demonstrate that Rossiya has continued, and continues, to act in blatant disregard for U.S. export controls and the terms of previously issued TDOs. Specifically, the initial TDO, issued on May 20, 2022, was based on evidence that Rossiya engaged in conduct prohibited by the Regulations by operating multiple aircraft subject to the EAR and classified under ECCN 9A991.b on flights into Russia after March 2, 2022, from destinations including, but not limited to, Hurghada, Egypt; Sharm el-Sheikh, Egypt; Dubai, United Arab Emirates; and Sharjah, United Arab Emirates, without the required BIS authorization.[9] Further evidence submitted by BIS indicated that Rossiya also continued to operate aircraft subject to the EAR domestically on flights within Russia, potentially in violation of section 736.2(b)(10) of the Regulations.

As discussed in the prior renewal orders, BIS presented evidence indicating that, after the initial May 20, 2022 TDO issued, Rossiya continued to operate aircraft subject to the EAR and classified under ECCN 9A991.b on flights both into and within Russia, in violation of the Regulations and the TDO itself.[10] The November 15, 2022 order detailed flights into and out of Russia from/to Antalya and Istanbul, Turkey, as well as within Russia.[11] The May 12, 2023 renewal order documented a similar pattern of prohibited conduct.[12]

Since that time, Rossiya continued to engage in conduct prohibited by the TDO and Regulations. In its October 18, 2023, request for renewal of the TDO, BIS submitted evidence that Rossiya continues to operate aircraft subject to the EAR and classified under ECCN 9A991.b, both on flights into and within Russia, in violation of the May 12, 2023 renewal order and/or the Regulations. Specifically, BIS's evidence and related investigation demonstrates that Rossiya continued to operate aircraft subject to

the public interest to prevent an imminent violation.

[6] 88 FR 59791 (Aug. 30, 2023).

[7] 87 FR 12226 (Mar. 3, 2022). Additionally, BIS published a final rule effective April 8, 2022, which imposed licensing requirements on items controlled on the Commerce Control List (''CCL'') under Categories 0–2 that are destined for Russia or Belarus. Accordingly, now all CCL items require export, reexport, and transfer (in-country) licenses if destined for or within Russia or Belarus. 87 FR 22130 (Apr. 14, 2022).

[8] 87 FR 13048 (Mar. 8, 2022).

[9] Publicly available flight tracking information shows that on March 8, 2022, serial number (SN) 27650 flew from Hurghada, Egypt to Moscow, Russia. On March 6, 2022, SN 41212 flew from Sharm el-Sheikh, Egypt to St. Petersburg, Russia and SN 44435 flew from Dubai, United Arab Emirates to St. Petersburg, Russia. In addition, on March 7, 2022, SN 41202 flew from Sharjah, United Arab Emirates to Moscow, Russia.

[10] Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

[11] Publicly available flight tracking information shows that SN 35278 flew from Antalya, Turkey to Moscow, Russia on November 12, 2022 and from Kaliningrad, Russia to Moscow, Russia on September 28, 2022. In addition, on SN 33622 flew from Istanbul, Turkey to St. Petersburg, Russia on November 2, 2022 and from Krasnoyarsk, Russia to Irkutsk, Russia on November 5, 2022.

[12] Publicly available flight tracking information shows that SN 34900 flew from Sharm el-Sheikh, Egypt to Moscow, Russia on March 20, 2023. Additionally, SN 34897 flew from Istanbul, Turkey to Moscow, Russia on March 16, 2023 and SN 28515 flew from Magadan, Russia to Anadyr, Russia on April 25, 2023.

the EAR, including, but not limited to, on flights into and out of Russia from/to Hurghada, Egypt, and Samarkand, Uzbekistan, as well as domestically within Russia. Information about those flights includes, but is not limited to, the following:

Tail No.	Serial No.	Aircraft type	Departure/arrival cities	Dates
RA–73188	34900	737–8GJ	Bishkek, KG/Krasnoyarsk, RU	November 3, 2023.
RA–73188	34900	737–8GJ	Hurghada, EG/Moscow, RU	September 27, 2023.
RA–73188	34900	737–8GJ	Sharm el-Sheikh, EG/Moscow, RU	September 21, 2023.
RA–73192	34897	737–8GJ	Hurghada, EG/Samara, RU	November 1–2, 2023.
RA–73192	34897	737–8GJ	Hurghada, EG/Samara, RU	September 27, 2023.
RA–73192	34897	737–8GJ	Hurghada, EG/Kazan, RU	September 25, 2023.
RA–73218	35278	737–8Q8	Samarkand, UZ/St. Petersburg, RU	August 4, 2023.
RA–73218	35278	737–8Q8	Tashkent, UZ/St. Petersburg, RU	July 31, 2023.
RA–73279	28515	777–312	Anadyr, Ru/Moscow, RU	September 22, 2023.
RA–73279	28515	777–312	Vladivostok, RU/Moscow, RU	August 29, 2023.
RA–73292	28531	777–312	Moscow, RU/Magadan, RU	September 27, 2023.
RA–73292	28531	777–312	Yuzhno-Sakhalinsk, RU/Moscow, RU	August 13, 2023.

III. Findings

Under the applicable standard set forth in Section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS demonstrates that Rossiya has acted in violation of the Regulations and the TDO; that such violations have been significant, deliberate and covert; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Moreover, I find that renewal for an extended period is appropriate because Rossiya has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR. Therefore, renewal of the TDO for one year is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with Rossiya, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

IV. Order

It is therefore ordered:

First, Rossiya Airlines, Pilotov St 18–4, St. Petersburg, Russia, 196210, when acting for or on their behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of Rossiya any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by Rossiya of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby Rossiya acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from Rossiya of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

D. Obtain from Rossiya in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by Rossiya, or service any item, of whatever origin, that is owned, possessed or controlled by Rossiya if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Rossiya by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of sections 766.24(e) of the EAR, Rossiya may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the

Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Rossiya as provided in section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Rossiya and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for one year.

Matthew S. Axelrod,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2023–25091 Filed 11–13–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Nikolay Goltsev, a/k/a Nick Stevens, a/k/a Gio Ross, 107 Rue Caron, Ste-Anne-De-Bellevue, Quebec, Canada H9X4A1; Salimdzhon Nasriddinov, 3734 Laurel Ave., Brooklyn, NY 11224; Kristina Puzyreva, 107 Rue Caron, Ste-Anne-De-Bellevue, Quebec, Canada H9X4A1; Vladimir Bochkarev, Privolnaya Street 75, Korp.1, Apt. 173, Moscow, Russia; Pavel Chernikov, Zoologicheskiy Pereulok 9/11. Apt. 13, Moscow, Russia 123242; Yekaterina Vetoshkina, Ulitsa Privolnaya 75/1, Apt. 173, Moscow, Russia, 109431; Oleg Zenchenko, Vesenniya Street 16, Taytsy, Petersburg Region, Russia and Kupchinskaya Street 29/1, Apt. 363, St. Petersburg, Russia 192283; SH Brothers Group, Inc., 3734 Laurel Ave., Brooklyn, NY 11224; SN Electronics, Inc., 2650 AB Coney Island Ave., Brooklyn, NY 11223; Suntronic F.Z.E., Shiekh Khalifa Bin Zayed, St-Amberjem Tower E1/913, Ajman, United Arab Emirates; Order Temporarily Denying Export Privileges

Pursuant to section 766.24 of the Export Administration Regulations (the ''Regulations'' or ''EAR''),[1] the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested the issuance of an Order temporarily denying, for a period of 180 days, the export privileges under the Regulations of: Nikolay Goltsev, Salimdzhon Nasriddinov, Kristina Puzyreva, Vladimir Bochkarev, Pavel Chernikov, Yekaterina Vetoshkina, Oleg Zenchenko, SH Brothers Group, Inc. (''SH Brothers''), SN Electronics, Inc. (''SN Electronics''), and Suntronic FZE (''Suntronic''). OEE's request and related information indicates that these parties are located in New York, the Russian Federation and the United Arab Emirates (''U.A.E.''), at the respective addresses listed on the caption page of this order and on page 16, *infra.*

I. Legal Standard

Pursuant to section 766.24, BIS may issue an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations. 15 CFR 766.24(b)(1) and 766.24(d). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge ''is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]'' *Id.* A ''[l]ack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

II. OEE'S Request for a Temporary Denial Order

The U.S. Commerce Department, through BIS, responded to the Russian Federation's (''Russia's'') further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia's access to technologies and other items that it needs to sustain its aggressive military capabilities. These controls primarily target Russia's defense, aerospace, and maritime sectors and are intended to cut off Russia's access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia's strategic ambitions to exert influence on the world stage.

As of February 24, 2022, any item classified under any Export Classification Control Number (''ECCN'') in Categories 3 through 9 of the Commerce Control List (''CCL'') required a license to be exported or reexported to Russia. *See* 87 FR 12226 (Mar. 3, 2022). As of April 8, 2022, the license requirements for Russia were expanded to cover all items on the CCL. *See* 87 FR 22130 (Apr. 14, 2022). These rules were codified in 15 CFR 746.8, which state, ''a license is required, excluding deemed exports and deemed reexports, to export, reexport, or transfer (in-country) to or within Russia or Belarus any item subject to the EAR and specified in any Export Control Classification Number (ECCN) on the CCL.''

BIS has imposed additional license requirements for exports, reexports and transfers to or within Russia of any items subject to the EAR that were identified under certain Schedule B or Harmonized Tariff Schedule 6 (''HTS'') numbers under Supplement No. 4 to Part 746—Russian and Belarusian Industry Sector Sanctions Pursuant to § 746.5(a)(1)(ii).[2] HTS codes take their first six digits from the corresponding Harmonized System (''HS'') code, a standardized numerical method of classifying traded products used by customs authorities around the world. On September 14, 2023, working in conjunction with the United Kingdom and European Union, BIS published a ''Common High Priority Items List,'' which identified items by their corresponding HTS codes listed in Supp. No. 4 to Part 746 that Russia sought to procure for its weapons programs.[3]

[1] The Regulations, currently codified at 15 CFR parts 730 through 774 (2023), originally issued pursuant to the Export Administration Act (50 U.S.C. 4601–4623 (Supp. III 2015) (''EAA''), which lapsed on August 21, 2001. The President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by successive Presidential Notices, continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2012)) (''IEEPA''). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (''ECRA''). While section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders.

[2] *See, e.g.,* 87 FR 12856 (March 8, 2022).

[3] *See https://www.bis.doc.gov/index.php/all-articles/13-policyguidance/country-guidance/2172-russia-export-controls-list-of-common-high-priority-items.* Note that additional HTS codes were added

Continued

On or about November 6, 2023, Goltsev, Nasriddinov, Puzyreva, Bochkarev, Chernikov, Vetoshkina, and Zenchenko (collectively ''the co-conspirators'') were each indicted on multiple counts in the United States District Court for the Eastern District of New York. The charges include, but are not limited to, conspiring to violate U.S. export control laws in connection with the unlicensed export of items on the CCL and Supp. No. 4 to Part 746. The co-conspirators are also charged with smuggling, as well as failure to file and filing false Electronic Export Information (''EEI'').[4]

In its request, OEE has presented evidence indicating that, between at least on or about January 2022 and October 2023, Goltsev, Nasriddinov, Puzyreva, Bochkarev, Chernikov, Vetoshkina, and Zenchenko conspired to violate ECRA and the EAR by unlawfully sourcing and exporting millions of dollars in dual-use electronics from the United States for export to Russia without the required licenses. In instances where a particular item may not have required an export license, the co-conspirators also made, and caused to be made, false and misleading statements with respect to EEI filings in order to conceal the ultimate end destination and end user.

As alleged in the indictment, Goltsev and Nasriddinov sourced and purchased U.S.-origin electronics at the direction of Russian procurement agents, including Bochkarev, Chernikov, Vetoshkina, and Zenchenko. Goltsev, Nasriddinov, and Puzyreva utilized U.S.-registered companies, SH Brothers Group, Inc. and SN Electronics, Inc., both located in Brooklyn, NY, as part of the procurement scheme. Before ultimate diversion to Russia, some of these items were shipped to third-country transshipment companies, including Suntronic, a front company located in the United Arab Emirates and utilized by Bochkarev. Based on the facts alleged in the indictment, Goltsev, Nasriddinov, Puzyreva, Bochkarev, Chernikov, Vetoshkina, and Zenchenko were aware of U.S. export control laws and took affirmative action to conceal their unlawful export-related activities in order to deceive U.S. manufacturers and distributors, and to evade detection by law enforcement.

A. The Unlawful Procurement Scheme

As further alleged in the indictment, several of the co-conspirators worked to procure items on behalf of various Russian entities. For example, until in or about August 2022, Vetoshkina, a Russian national residing in Russia, served as a procurement manager for OOO[5] Radioavtomatika (''Radioavtomatika''), a Russian defense procurement firm based in Moscow. Radioavtomatika was added to the BIS Entity List on or about March 3, 2022.[6] Vetoshkina then began working for OOO Komtech (''Komtech''), a Moscow-based electronics distributor.

Chernikov, a Russian national residing in Russia, conducted procurement operations for OOO Testkomplekt (''Testkomplekt''), another Moscow-based electronics distributor that has held contracts with Russian military entities. Testkomplekt was added to OFAC's Specially Designated Nationals (''SDN'') list on or about May 19, 2023, pursuant to Executive Order 14024.[7] Similarly, Zenchenko conducted procurement operations for OOO NEVA–EKB (''EKB-Neva''), a Moscow-based electronics supplier, which was added to OFAC's SDN list on or about May 19, 2023, pursuant to Executive Order 14024. Goltsev, a Russian national residing in Canada, also had long-standing relationships with Radioavtomatika, Testkomplekt, EKB–NEVA and other Russia-based entities, and had procured electronic components for them for years.

Based on evidence presented by OEE and as further stated in the indictment, Bochkarev, Chernikov, Vetoshkina, and Zenchenko received orders from Russian end users in the defense and technology sectors seeking to acquire U.S.-origin items. They then relayed these requests to Goltsev, who used aliases, including ''Nick Stevens'' and ''Gio Ross,'' to communicate with U.S. manufacturers and distributors. In these communications, Goltsev made material misrepresentations about the transactions, including about the ultimate end use and end users, as well as the parties involved in the transactions. Goltsev and Nasriddinov, a dual-national of Russia and Tajikistan residing in New York, purchased the items from U.S. companies. Nasriddinov received the items at various addresses in Brooklyn, New York and supervised their repackaging. To further the scheme, Puzyreva, Goltsev's spouse, utilized numerous bank accounts, including one that listed Nasriddinov's home address as the address of record.

After repackaging the items, Nasriddinov and Goltsev then exported the items from the United States for transshipment to Russia and Russian end users, including Radioavtomatika, Komtech, Testkomplekt, and EKB–NEVA. Using SH Brothers and SN Electronics, Nasriddinov and Goltsev shipped the items through various intermediaries located in third countries, including China, India, Turkey, and the United Arab Emirates. One such intermediary was Suntronic, located in the U.A.E. and used by Bochkarev to conduct multiple procurement operations for Russian entities.

As part of the scheme, Goltsev, Nasriddinov, Puzyreva, Bochkarev, Chernikov, Vetoshkina, and Zenchenko also made, and caused to be made, material misrepresentations and omissions, including with respect to EEI filings, to conceal the unlawful procurement transactions. As a result of their actions, the co-conspirators caused U.S. companies to, among other things, sell and export electronic components in violation of ECRA and the EAR.

Some of the items sourced and exported by Goltsev, Nasriddinov, Puzyreva, Bochkarev, Chernikov, Vetoshkina, and Zenchenko included electronic components and integrated circuits listed in Supp. No. 4 to Part 746 of the EAR and requiring a license to Russia, which have been designated as ''Tier 1'' items on the Common High Priority Items List. These priority items pose a heightened risk of being diverted illegally to Russia because of their importance to Russia's war efforts.

B. Knowledge of U.S. Export Controls and Intent To Evade

As further alleged in the indictment, communications between the co-conspirators indicate that they had knowledge of U.S. export controls and made efforts to conceal their unlawful procurement. For example, in or about October 2021, after Vetoshkina advised Goltsev that paperwork for an order of electronics stated that the items were destined for Russia, Goltsev advised her to use a Hong Kong-based company as the ''bill-to'' and confirmed that he would nonetheless ship the items to Radioavtomatika. In another communication to Goltsev in or about October 2022, Vetoshkina's employee listed several different electronic components, including coaxial switches and capacitors, that required a license to

to Supp. No. 4 to Part 746, including for items identified on the ''Common High Priority Items List,'' pursuant to several **Federal Register** notices. *See* 87 FR 57068 (Sep. 16, 2022); 88 FR 12175 (Feb. 27, 2023); and 88 FR 33922 (May 23, 2023).

[4] The co-conspirators are also charged with, *inter alia,* conspiracy to defraud the United States, wire fraud and wire fraud conspiracy, and money laundering conspiracy.

[5] ''OOO'' is the abbreviation for the Russian business entity type ''общество с ограниченной ответственностью,'' which means limited private company and is roughly the equivalent of a limited liability company or LLC in the United States.

[6] *See* 87 FR 13141 (Mar. 9, 2022).

[7] *https://home.treasury.gov/news/press-releases/jy1494.*

be shipped to Russia and stated, ''please tell me do you have these goods, priceless in Russia.'' Goltsev responded with price quotations for the items.

Based on facts alleged in the indictment, other communications between Goltsev and Russian procurement agents, including Chernikov, demonstrate a knowledge of export control laws and sanctions, as well as an intent to conceal. For example, in a December 2022 text message exchange with Chernikov regarding an order placed through SH Brothers, Goltsev requested ''separate invoices. . .the ECCN[s] aren't very pretty. We'll ship them piecemeal.'' In another communication in or about February 28, 2023, Goltsev mentions the sanctioning of Electronic Network, Inc. (''Electronic Network''), a company based in Montreal, Canada, which was added to the BIS Entity List on or about February 24, 2023.[8] Goltsev said, ''. . . do me a favor. If anyone ever asks about me, don't tell them who I am, where I am, etc. . . . Elnet's [Electronic Network] been in trouble for a long time because they exported a lot to Russia.'' Goltsev was an account manager and purchasing coordinator for Electronic Network.

Communications between Goltsev and Zenchenko also reflect knowledge of and familiarity with U.S. export controls. Specifically, Goltsev also received requests from Zenchenko to obtain items on the CCL that were controlled for anti-terrorism reasons. For example, on or about December 16, 2022, in response to a query, Zenchenko advised Goltsev that ''76 pcs, you can buy them here with ECCN 3A991.c.3.'' In a message on or about February 1, 2023, Zenchenko asked Goltsev, ''ECCN: 5A991.b.4 can you get this?'' and included a screenshot of a product from a Texas-based electronics distributor. Similarly, in a message on or about February 6, 2023, Zenchenko asked Goltsev, ''can you get this ECCN? 4A994.'' In a message on or about February 22, 2023, Zenchenko requested ''40 pcs ECCN 5A991.b.1 Can you get this?'' At the time of these communications, each of ECCNs listed in this paragraph required an export license to Russia and was subject to a presumption of denial licensing policy. *See* Section 746.8. Between November 2022 and February 2023, SH Brothers made nine shipments to Zenchenko in Russia through a Turkish intermediary.

[8] *See* 88 FR 12170 (Feb. 27, 2023).

C. SH Brothers, SN Electronics, and Suntronic

As alleged in the indictment and based on evidence presented by OEE, the co-conspirators used SH Brothers and SN Electronics to export items from the United States through intermediaries located in third countries. OEE has presented evidence that Nasriddinov founded SH Brothers on or about June 11, 2021 and SN Electronics, which was registered in his wife's name, on or about January 30, 2023. Both companies have listed addresses in Brooklyn, New York. One of intermediaries used for transshipment to Russia was Suntronic, a front company located in the U.A.E. and used by Bochkarev to conduct procurement operations for multiple Russian entities. As alleged in the indictment, on or about and between August 2022 and September 2023, SH Brothers exported more than 250 shipments of electronic components, valued at more than $7 million, to third-country transshipment companies, including Suntronic, where they were then unlawfully diverted to Russia.

The indictment further alleges that, between in or about November 2022 and August 2023, SH Brothers exported approximately 27 shipments, valued at approximately $1,086,058, to Suntronic. These shipments were then sent to Russian end users, including Petersburg Intelligent Transportation Logistics (''Petersburg''), which was added to OFAC's SDN list on or about May 19, 2023; Suntronic received approximately $15 million from Petersburg between in or about October 2022 and February 2023. As detailed in the indictment, one of the shipments, occurring in or about June 23, 2023, was for transceivers listed in Supp. No. 4 to Part 746 of the EAR and requiring a license to Russia, which carried a Tier 1 HTS code listed on the Common High Priority Items List. The transceivers, which have been found in Russian UAVs, required a license from BIS to be exported to Russia pursuant to section 746.5(a)(1) of the Regulations. These types of transceivers have been found in Russian unmanned aerial vehicles (''UAVs'') in Ukraine.

Based on the facts set forth in the indictment, Goltsev and Bochkarev communicated about the shipments, including ways in which to conceal the ultimate destination and end users. For example, in a communication in or about January 2023, Goltsev informed Bochkarev that he needed an end user declaration and Bochkarev responded, ''darn.'' The two ultimately agreed to falsely list a U.A.E. company as the end user. In a February 2023 communication, Goltsev advised Bochkarev to ''write something more substantial [to the U.S. company] so that there are no more questions.'' After Bochkarev asked, ''is it better to provide them with a Chinese end user,'' Goltsev stated ''yes should be ok.'' In another message on or about March 3, 2023, Bochkarev asked Goltsev about the possibility of making one shipment paid ''via the Chinese company,'' since ''each one separately so expensive, or does it mean extra trouble at customs?'' Goltsev responded, ''no sir, more than 50–60 will trigger a lot of interest it's better to break it up.''

The indictment also alleges that between in or about September 2022 and November 2022, SH Brothers made approximately 15 shipments of electronic components, valued at approximately $352,000, to Testkomplekt through an intermediary located in Hong Kong. In or about November 2022, U.S. Customs and Border Protection (''CBP'') detained some shipments from SH Brothers that were allegedly bound for Hong Kong but ultimately destined for Testkomplekt in Russia. As detailed in the indictment, Chernikov repeatedly questioned Goltsev about the status of the detained shipments and provided him with false information to use in responding to CBP inquiries.

Based on the facts alleged in the indictment and evidence presented by OEE, SH Brothers also made a shipment of microchips to Vetoshkina's company, Komtech, through a Turkish intermediary. Specifically, in a message on or about August 31, 2022, Komtech's founder and director requested that Vetoshkina procure 3,000 microchips made by an Arizona-based manufacturer. Vetoshkina sourced the microchips through Goltsev and SH Brothers, who received several payments from the Turkish intermediary, including an October 3, 2022 payment for $5,300. The wire details for this payment listed the part number of the microchips and denoted ''QTY 2000.''

In a message exchange on or about April 21, 2023, Vetoshkina and Goltsev discussed shipping the microchips through China or Turkey, ultimately deciding to make the shipment through Turkey to ''avoid problems.'' Goltsev provided Vetoshkina with an SH Brothers invoice for 3,000 pieces of the requested microchip, which listed the applicable HTS codes and payment information for an SH Brothers bank account in Brooklyn, New York. On or about April 17, 2023, a U.S. company shipped a package containing the microchips was mailed to SH Brothers and two days later, on or about April 25, 2023, Nasriddinov sent the same items to the intermediary in Turkey. OEE's evidence includes an invoice for 3,000 ATMEGA8A–MN Microchip Microcontrollers, and a second line item of 2,000 ATMEGA8A–MN Microchip Microcontrollers, bearing Tier 1 HTS code 8542310001, which is listed in Supp. No. 4 to Part 746 of the EAR and requires a license to Russia. The HTS code is listed on the Common High Priority Items List and the microchips would have required a license from BIS to be exported to Russia. *See* Section 746.5(a)(1)(ii).

Based on OEE's investigation, which remains ongoing, SH Brothers also furthered the scheme by making false EEI filings, including by declaring that items were being shipped to one party when they were, in fact, being shipped to another, presumably to further obfuscate the transactions with respect to the ultimate destination and to evade detection by law enforcement. For example, OEE has presented evidence that, an EEI filing made by SH Brothers in or about February 16, 2023 indicated that shipment was destined for China, with an intermediary consignee also located in China. Based on corresponding DHL records, however, the items were shipped to a different location in China not identified on the EEI. Records also reflect that the shipment contained items that would have required a license for export to Russia, specifically CY7C109D–10VXI Infineon SRAM Chips, bearing HTS code 8542320041 and classified under ECCN 3A991.b.2.b.

In another EEI filing made by SH Brothers on or about February 9, 2023, ostensibly to the U.A.E, SH Brothers identified the intermediary consignee as Suntronic. Corresponding DHL records, however, show that SH Brothers shipped the items to a company located in Hong Kong. The shipment contained a ADM3202ARNZ AD Transmitter, bearing HTS code 8542390001, a Tier 1 HTS code listed in Supp. No. 4 to Part 746 of the EAR, which would have required an export license for export to Russia pursuant to section 746.5(a)(1).

OEE's investigation also indicates that, in or about January 2023, in a further effort to evade detection and in response to law enforcement scrutiny, including the delay or detention of several outbound shipments from SH Brothers, Goltsev and Nasriddinov began using SN Electronics to order and export electronic components. As alleged in the indictment, on or about and between November 8, 2022 and November 15, 2022, Goltsev and Nasriddinov exchanged a series of messages discussing a shipment of electronic components that had been detained by U.S. officials at John F. Kennedy International Airport (''JFK'') in Queens, New York. Goltsev commented that shipping to Russia had become ''dangerous'' and went on to say, ''we need to figure out why they keep holding the package . . . I don't really understand how they figured [it] out.'' In a subsequent message, on or about November 9, 2022, Goltsev commented that, ''in the future we will need to load from several companies, not to attract attention . . . for now large packages will be dangerous until we understand what they figured out . . . we will need to think of diversifying the load . . . so that not everything is moving from the same deck.''

In subsequent communications between on or about January 31, 2023 and February 10, 2023, Nasriddinov confirmed to Goltsev that the ''new company is already functioning . . . Its called SN Electronics'' and Goltsev responded, ''Wonderful sir . . . Eagerly waiting for Tax ID sir. We had problems with some large orders from [a Texas-based company] . . . we will reorder later from SN.'' Nasriddinov later provided Goltsev with SN Electronics' registered address in Brooklyn, New York, which was also the address of a restaurant that Nasriddinov owned.

As detailed in the indictment, Goltsev and Nasriddinov then used SN Electronics to obtain approximately $36,871.49 worth of non-reflective switches, listed in Supp. No. 4 to Part 746 of the EAR and requiring a license to Russia, from a U.S. company for Chernikov and Testkomplekt. Although Nasriddinov had initially placed the order for these non-reflective switches from the U.S. company through SH Brothers, the order was cancelled and the U.S. company told Goltsev that the ''manufacturer requires that shipments of this product be direct to an END CUSTOMER from an AUTHORIZED DISTRIBUTOR only.''

Goltsev subsequently placed the same order through SN Electronics, using the alias ''Gio Ross'' in his email communications with the U.S. company and falsely claimed in an email on or about February 15, 2023 that SN Electronics was a ''prototype and design manufacturing company.'' On or about February 21, 2023, the order was shipped to an SN Electronics address in Brooklyn, New York and, on or about February 27, 2023, Nasriddinov exported the items to a Hong-Kong based transshipment company frequently utilized by Testkomplekt. The switches had Tier 1 HTS codes that were included on the Common High Priority Items List and required a license from BIS to be exported to Russia pursuant to section 746.5(a)(1).

III. Findings

I find that the evidence presented by BIS demonstrates that a violation of the Regulations by the above-captioned parties is imminent in both time and degree of likelihood. This includes evidence demonstrating the breadth of the conspiracy, that multiple parties and entities are involved, and that the conduct occurred over a lengthy period of time. As such, a TDO is needed to give notice to persons and companies in the United States and abroad that they should cease dealing with Nikolay Goltsev, Salimdzhon Nasriddinov, Kristina Puzyreva, Vladimir Bochkarev, Pavel Chernikov, Yekaterina Vetoshkina, Oleg Zenchenko, SH Brothers Group, Inc. (''SH Brothers''), SN Electronics, Inc. (''SN Electronics''), and Suntronic FZE (''Suntronic'') in export or reexport transactions involving items subject to the EAR. Such a TDO is consistent with the public interest to preclude future violations of the Regulations given the deliberate, covert, and determined nature of the misconduct and clear disregard for complying with U.S. export control laws.

This Order is being issued on an *ex parte* basis without a hearing based upon BIS's showing of an imminent violation in accordance with section 766.24 of the Regulations.

It is therefore ordered:

First, that NIKOLAY GOLTSEV, a/k/a NICK STEVENS, a/k/a GIO ROSS, with an address at 107 Rue Caron, Ste-Anne-De-Bellevue, Quebec, Canada H9X4A1; SALIMDZHON NASRIDDINOV, with an address at 3734 Laurel Ave., Brooklyn, NY 11224; KRISTINA PUZYREVA, with an address at 107 Rue Caron, Ste-Anne-De-Bellevue, Quebec, Canada H9X4A1; VLADIMIR BOCHKAREV, with an address at Privolnaya Street 75, Korp.1, Apt. 173, Moscow, Russia; PAVEL CHERNIKOV, with an address at Zoologicheskiy Pereulok 9/11. Apt.13, Moscow, Russia 123242; YEKATERINA VETOSHKINA, with an address at Ulitsa Privolnaya 75/1, Apt. 173, Moscow, Russia, 109431; OLEG ZENCHENKO, with an address at Vesenniya Street 16, Taytsy, Petersburg Region, Russia and an address at Kupchinskaya Street 29/1, Apt. 363, St. Petersburg, Russia 192283; SH BROTHERS GROUP, INC., with an address at 3734 Laurel Ave., Brooklyn, NY 11224; SN ELECTRONICS, INC., with an address at 2650 AB Coney

Island Ave, Brooklyn, NY 11223; and SUNTRONIC FZE, with an address at Shiekh Khalifa Bin Zayed St-Amberjem Tower E1/913 Ajman, United Arab Emirates; and when acting for or on their behalf, any successors or assigns, agents, or employees (each a ''Denied Person'' and collectively the ''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Nikolay Goltsev, Salimdzhon Nasriddinov, Kristina Puzyreva, Vladimir Bochkarev, Pavel Chernikov, Yekaterina Vetoshkina, Oleg Zenchenko, SH Brothers Group, Inc., SN Electronics, Inc., and Suntronic FZE by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

In accordance with the provisions of section 766.24(e) of the EAR, Nikolay Goltsev, Salimdzhon Nasriddinov, Kristina Puzyreva, Vladimir Bochkarev, Pavel Chernikov, Yekaterina Vetoshkina, Oleg Zenchenko, SH Brothers Group, Inc., SN Electronics, Inc., and Suntronic FZE may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. Respondents Nikolay Goltsev, Salimdzhon Nasriddinov, Kristina Puzyreva, Vladimir Bochkarev, Pavel Chernikov, Yekaterina Vetoshkina, Oleg Zenchenko, SH Brothers Group, Inc., SN Electronics, Inc., and Suntronic FZE may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on each denied person and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Matthew S. Axelrod,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2023–25005 Filed 11–13–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Preliminary Affirmative Determination of Circumvention

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that imports of small and large garlic chunks from the People's Republic of China (China) are circumventing the antidumping (AD) order on fresh garlic from China.

DATES: Applicable November 14, 2023.

FOR FURTHER INFORMATION CONTACT: Charles DeFilippo or Jacob Saude, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3797 or 202–482–0981, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1994, Commerce published the AD order on imports of fresh garlic from China.[1] On February 16, 2023, the Fresh Garlic Producers Association and its individual members (collectively, the petitioners) requested that Commerce initiate a circumvention inquiry with regard to small and large garlic chunks that are exported to the United States from China.[2] In the Circumvention Request, the petitioners alleged that small and large garlic chunks constitute merchandise altered in form or appearance in such minor respects that it should be included within the scope of the *Order,* pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 251.226(j).[3]

On June 8, 2023, Commerce published in the **Federal Register** the notice of initiation of this circumvention inquiry.[4] In the *Initiation Notice,*

[1] *See Antidumping Duty Order: Fresh Garlic from the People's Republic of China,* 59 FR 59209 (November 16, 1994) (*Order*).

[2] *See* Petitioners Letter, ''Petitioners' Request for Circumvention Ruling Pursuant to Section 781(c) of the Tariff Act of 1930, As Amended,'' dated February 16, 2023 (Circumvention Request).

[3] *See* Circumvention Request.

[4] *See Fresh Garlic From the People's Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty Order,* 88 FR 37510 (June 8, 2023) (*Initiation Notice*), and accompanying Initiation Checklist.

Commerce initiated the circumvention inquiry on the basis of the minor alterations allegation, pursuant to section 781(c) of the Act and 19 CFR 351.226(j).[5] Commerce initiated the inquiry on a country-wide basis.[6] For a complete description of events that followed the initiation of this inquiry, *see* the Preliminary Decision Memorandum.[7]

Scope of the Order

The merchandise covered by the *Order* is fresh garlic from China. The subject garlic is currently classifiable under subheadings: 0703.20.0005, 0703.20.0010, 0703.20.0015, 0703.20.0020, 0703.20.0000, 0703.20.0090, 0710.80.7060, 0710.80.97500, 0711.90.6000, 0711.90.6500, 2005.90.9500, 2005.90.9700, and 2005.99.9700 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the *Order* is dispositive. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Merchandise Subject to the Circumvention Inquiry

This circumvention inquiry covers small and large garlic chunks produced in China and exported to the United States. A complete description of the merchandise subject to the circumvention inquiry is contained in the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this circumvention inquiry pursuant to section 781(c) of the Act and 19 CFR 351.226(j). For a complete description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Preliminary Affirmative Determination of Circumvention

As detailed in the Preliminary Decision Memorandum, we preliminarily determine that small and large garlic chunks produced in China and exported to the United States constitute merchandise altered in form or appearance in such minor respects that they should be included within the scope of the *Order,* pursuant to section 781(c) of the Act and 19 CFR 351.226(j). We also preliminarily determine that this affirmative circumvention finding should be applied on a country-wide basis.

Suspension of Liquidation

In accordance with 19 CFR 351.226(l)(2), we will direct U.S. Customs and Border Protection (CBP) to continue the suspension of liquidation of previously suspended entries and to suspend liquidation of all entries of small and large garlic chunks produced in and exported from China that are entered, or withdrawn from warehouse, for consumption on or after June 8, 2023, (*i.e.,* the date of the publication of the *Initiation Notice*).[8] Pursuant to 19 CFR 351.226(l)(2), we will also instruct CBP to require AD cash deposit rates in effect for fresh garlic for each unliquidated entry of small and large garlic chunks produced in and exported from China that have been entered, or withdrawn from warehouse, for consumption on or after June 8, 2023.[9] These suspension of liquidation instructions and cash deposit requirements will remain in effect until further notice.

Public Comment

Pursuant to 19 CFR 351.226(f)(4), interested parties may submit case briefs or other written comments within 14 days of the date of publication of this notice; seven days thereafter, interested parties may submit rebuttal comments. In accordance with 19 CFR 351.226(f)(4), no new factual information will be accepted in the comments or rebuttal comments.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of the issues to be discussed. If a request for a hearing is made, parties will be notified of the date and time for the hearing at a later date. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date of the hearing.

All submissions must be filed electronically and received successfully in their entirety via ACCESS by 5:00 p.m. Eastern Time on the date that they are due. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[10]

Notification to Interested Parties

This determination is issued and published in accordance with sections section 781(c) of the Act and 19 CFR 351.226(g)(1).

Dated: November 6, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Merchandise Subject to the Circumvention Inquiry
V. Statutory and Regulatory Framework: Minor Alterations
VI. Circumvention Analysis
VII. Preliminary Affirmative Determination of Circumvention
VIII. Country-Wide Determination
IX. Recommendation

[FR Doc. 2023–24993 Filed 11–13–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–848]

Truck and Bus Tires From Thailand: Initiation of Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable November 6, 2023.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson or Faris Montgomery;

[5] *See Initiation Notice.*

[6] *Id.*

[7] *See* Memorandum, "Fresh Garlic from the People's Republic of China: Preliminary Affirmative Determination of Circumvention for Small and Large Garlic Chunks," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[8] *See Initiation Notice.*

[9] *See Order.*

[10] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule,* 88 FR 67069 (September 29, 2023).

AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4929 or (202) 482–1537, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On October 17, 2023, the U.S. Department of Commerce (Commerce) received an antidumping duty (AD) petition concerning imports of truck and bus tires from Thailand, filed in proper form on behalf of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC (USW) (the petitioner), a certified union which represents workers engaged in the production of truck and bus tires in the United States.[1]

On October 20 and 27, and November 1, 2023, Commerce requested supplemental information pertaining to certain aspects of the Petition.[2] The petitioner filed responses to these requests on October 24, 30, 31, and November 2, 2023.[3]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of truck and bus tires from Thailand are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the truck and bus tires industry in the United States. Consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry, because the petitioner is an interested party, as defined in section 771(9)(D) of the Act.[4] Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested LTFV investigation.[5]

Period of Investigation

Because the Petition was filed on October 17, 2023, the period of investigation (POI) for this investigation is October 1, 2022, through September 30, 2023, pursuant to 19 CFR 351.204(b)(1).

Scope of the Investigation

The products covered by this investigation are truck and bus tires from Thailand. For a full description of the scope of this investigation, *see* the appendix to this notice.

Comments on the Scope of the Investigation

On October 20 and November 1, 2023, Commerce requested further information and clarification from the petitioner regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.[6] On October 24 and November 2, 2023, the petitioner revised the scope.[7] The description of the merchandise covered by this investigation, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period of time for interested parties to raise issues regarding product coverage (*i.e.,* scope).[8] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,[9] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5 p.m. Eastern Time (ET) on November 27, 2023, which is the next business day after 20 calendar days from the signature date of this notice.[10] Any rebuttal comments, which may include factual information, must be filed by 5 p.m. ET on December 7, 2023, which is ten calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of the investigation be submitted during that period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the record of this LTFV investigation.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[11] An electronically filed document must be received successfully in its entirety by the time and date it is due.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of truck and bus tires to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant costs of production accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) general

[1] *See* Petitioner's Letter, ''Petition for the Imposition of Antidumping Duties on Imports of Truck and Bus Tires from Thailand,'' dated October 17, 2023 (the Petition).

[2] *See* Commerce's Letter, ''Petition for the Imposition of Antidumping Duties on Imports of Truck and Bus Tires from Thailand: Supplemental Questions,'' dated October 20, 2023 (Supplemental Questionnaire); *see also* Memoranda, ''Phone Call with Counsel to the Petitioner,'' dated October 27, 2023, and ''Phone Call with Counsel to the Petitioner,'' dated November 1, 2023.

[3] *See* Petitioner's Letters, ''Petition Supplemental Questions Response,'' dated October 24, 2023 (First Petition Supplement), ''Second Petition Supplemental Questions Response,'' dated October 30, 2023 (Second Petition Supplement), ''Submission of Exhibit Second Supp. II–7,'' dated October 31, 2023, ''Submission of Exhibit Second Supp. II–7,'' dated October 31, 2023, and ''Petition Third Supplemental Questions Response,'' dated November 2, 2023 (Third Petition Supplement).

[4] *See* Petition at Volume I at 2.

[5] *See infra,* section on ''Determination of Industry Support for the Petition.''

[6] *See* Supplemental Questionnaire; *see also* Memorandum, dated November 1, 2023.

[7] *See* First Petition Supplement at 3 and Exhibit Supp-I–1; *see also* Third Petition Supplement at 2 and Exhibit 1.

[8] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[9] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[10] The 20-day deadline falls on November 26, 2023, which is a Sunday. In accordance with 19 CFR 351.303(b)(1), Commerce will accept comments filed by 5:00 p.m. ET on November 27, 2023. *Id.* (''For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.'')

[11] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

product characteristics; and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe truck and bus tires, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5 p.m. ET on November 27, 2023, which is the next business day after 20 calendar days from the signature date of this notice.[12] Any rebuttal comments must be filed by 5 p.m. ET on December 7, 2023, which is 10 calendar days from the initial comment deadline. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[13] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[14]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.[15] Based on our analysis of the information submitted on the record, we have determined that truck and bus tires, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[16]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the appendix to this notice. To establish industry support, the petitioner estimated the 2022 production for each U.S. producer of truck and bus tires, by plant.[17] The petitioner based its estimates of 2022 truck and bus tire production on daily plant-specific production capacity data published in *Modern Tire Dealer.*[18] The petitioner then multiplied the daily production capacity data by 360 (to estimate annual capacity).[19] To calculate a capacity utilization rate for the U.S. truck and bus tires industry in 2022, the petitioner compared the 2022 U.S. production of truck and bus tires data sourced from the U.S. Tire Manufacturers Association (as reported in the February 27, 2023, edition of *Tire Business*) to the estimated total 2022 U.S. capacity to produce truck and bus tires.[20] To calculate plant-specific total 2022 production of the domestic like product, the petitioner applied the estimated capacity utilization rate to the total annualized capacity of each plant represented by the USW as well as each non-petitioning plant.[21] To calculate industry support, the petitioner divided the estimated 2022 production of the domestic like product for those plants represented by the USW by the estimated production of the domestic like product in 2022 for the entire U.S. truck and bus tires industry.[22] We relied on data provided by the petitioner for purposes of measuring industry support.[23]

On October 30, 2023, we received comments on industry support from American Omni Trading Company, LLC (Omni), a U.S. importer of truck and bus tires from Thailand.[24] On November 1,

[12] *See* 19 CFR 351.303(b)(1).

[13] *See* section 771(10) of the Act.

[14] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[15] *See* Petition at Volume I (pages 2–5 and Exhibits I–1 and I–3); *see also* First Petition Supplement at 3–6 and Exhibit Supp-I–3.

[16] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Checklist, ''Antidumping Duty Investigation Initiation Checklist: Truck and Bus Tires from Thailand,'' (AD Initiation Checklist) at Attachment II, Analysis of Industry Support for the Antidumping Duty Petition Covering Truck and Bus Tires from Thailand (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS.

[17] *See* Petition at Volume I (pages 6–8 and Exhibit I–3); *see also* First Petition Supplement at Exhibit Supp-I–8.

[18] *See* Petition at Volume I (pages 6–8 and Exhibit I–3); *see also* First Petition Supplement at 6–7 and Exhibit Supp-I–8.

[19] *See* Petition at Volume I (pages 7–8 and Exhibit I–3); *see also* First Petition Supplement at 7 and Exhibit Supp-I–8.

[20] *See* First Petition Supplement at 7–8 and Exhibits Supp-I–7 and Supp-I–8.

[21] *See* Petition at Volume I (pages 6–8 and Exhibit I–3); *see also* First Petition Supplement at 7–8 and Exhibit Supp-I–8.

[22] *See* Petition at Volume I (page 8); *see also* First Petition Supplement at 6–7 and Exhibit Supp-I–8.

[23] *See* Petition at Volume I (pages 5–8 and Exhibit I–3); *see also* First Petition Supplement at 6–8 and Exhibits Supp-I–7 and Supp-I–8. For further discussion, *see* AD Initiation Checklist at Attachment II.

[24] *See* Omni's Letter, ''Comments on Industry Support,'' dated October 30, 2023.

2023, the petitioner provided rebuttal comments.[25]

Our review of the data provided in the Petition, the First Petition Supplement, Petitioner's Response, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition. First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product, and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[26] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[27] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[28] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[29]

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[30]

The petitioner contends that the domestic industry's injured condition is illustrated by a significant volume of subject imports; reduced market share; underselling and price depression and/or suppression; decline in capacity utilization and U.S. shipments; and adverse impact on financial performance.[31] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[32]

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate a LTFV investigation of truck and bus tires from Thailand. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the AD Initiation Checklist.

U.S. Price

The petitioner based the export price (EP) on the average unit value (AUV) derived from official import statistics for imports of truck and bus tires from Thailand into the United States during the POI. The petitioner made certain adjustments to U.S. price for movement expenses, to calculate a net ex-factory U.S. price.[33]

Normal Value [34]

The petitioner based NV on home market prices obtained through market research for truck and bus tires produced in and sold, or offered for sale, in Thailand during the POI. The petitioner provided information indicating that the prices for truck and bus tires sold or offered for sale in Thailand were below the COP; therefore, the petitioner calculated NV based on CV.[35] For further discussion of CV, *see* the section ''Normal Value Based on Constructed Value,'' below.

Constructed Value

As noted above, the petitioner provided information indicating that the prices for truck and bus tires sold or offered for sale in Thailand were below COP. Therefore, the petitioner based NV on CV. Pursuant to section 773(e) of the Act, the petitioner calculated CV as the sum of the cost of manufacturing (COM), selling, general, and administrative (SG&A) expenses, financial expenses, and profit.[36]

As the petitioner is a union representing workers in the domestic industry producing truck and bus tires and is not a domestic producer, the petitioner contends it does not have access to the confidential information on actual production costs experienced by either the domestic or the foreign producers.[37] Therefore, in calculating the COM, the petitioner relied on publicly available information regarding the direct materials used to manufacture truck and bus tires, derived from a number of published studies.[38] Using this information, the petitioner calculated the average percentage of total tire weight represented by direct materials for truck and bus tires and valued these inputs using publicly available information applicable to Thailand.[39] In calculating labor, energy, SG&A, financial expenses, and profit ratios, the petitioner relied on the financial statements of producers of identical merchandise in Thailand.[40]

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of truck and bus tires from Thailand are being, or are likely to be, sold in the United States at LTFV. Based on a comparison of EP to NV, in accordance with sections 772 and 773 of the Act, the estimated dumping margin for truck and bus tires from Thailand is 48.39 percent.[41]

Initiation of LTFV Investigation

Based upon the examination of the Petition and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating a LTFV investigation to determine whether imports of truck and bus tires from Thailand are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

---

[25] *See* Petitioner's Letter, ''Rebuttal to Industry Support Comments,'' dated November 1, 2023 (Petitioner's Response).

[26] *See* AD Initiation Checklist at Attachment II; *see also* section 732(c)(4)(D) of the Act.

[27] *See* AD Initiation Checklist at Attachment II.

[28] *Id.*

[29] *Id.*

[30] *See* Petition at Volume I (page 15 and Exhibit I–4).

[31] *Id.* at 15–25 and Exhibits I–3, I–4, and I–10 through I–12; *see also* First Petition Supplement at 8 and Exhibits Supp–I–9 and Supp–I–10.

[32] *See* AD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping Duty Petition Covering Truck and Bus Tires from Thailand (Attachment III).

[33] *See* AD Initiation Checklist.

[34] In accordance with section 773(b)(2) of the Act, for this investigation, Commerce will request information necessary to calculate the constructed value (CV) and cost of production (COP) to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product.

[35] *See* AD Initiation Checklist.

[36] *Id.*

[37] *See* Petition at Volume II (page II–5); *see also* AD Initiation Checklist.

[38] *See* AD Initiation Checklist.

[39] *Id.*

[40] *Id.*

[41] *Id.*

Respondent Selection

In the Petition, the petitioner named 16 companies in Thailand as producers/exporters of truck and bus tires.[42] Following standard practice in AD investigations involving market economy countries, in the event Commerce determines that the number of exporters or producers in any individual case is large such that Commerce cannot individually examine each company based upon its resources, where appropriate, Commerce intends to select mandatory respondents in that case based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the ''Scope of the Investigation,'' in the appendix.

On November 1, 2023, Commerce released CBP data on imports of truck and bus tires under Administrative Protective Order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on CBP data must do so within three business days of the publication date of the notice of initiation of this investigation.[43] Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at *http://enforcement.trade.gov/apo*.

Comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the government of Thailand via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that subject imports are materially injuring or threatening material injury to a U.S. industry.[44] A negative ITC determination will result in the investigation being terminated.[45] Otherwise, this LTFV investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[46] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[47] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Particular Market Situation Allegation

Section 773(e) of the Act addresses the concept of particular market situation (PMS) for purposes of CV, stating that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act, nor 19 CFR 351.301(c)(2)(v), sets a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent's initial response to section D of the AD questionnaire.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission. Commerce will grant untimely filed requests for the extension of time limits only in limited cases where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulations concerning extensions prior to submitting extension requests or factual information in this investigation.[48]

Certification Requirements

Any party submitting factual information in an AD or countervailing duty (CVD) proceeding must certify to the accuracy and completeness of that

[42] *See* Petition at Volume I (Exhibit I–8).

[43] *See* Memorandum, ''Release of U.S. Customs and Border Protection Data,'' dated November 1, 2023.

[44] *See* section 733(a) of the Act.

[45] *Id.*

[46] *See* 19 CFR 351.301(b).

[47] *See* 19 CFR 351.301(b)(2).

[48] *See* 19 CFR 351.302; *see also, e.g., Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

information.[49] Parties must use the certification formats provided in 19 CFR 351.303(g).[50] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in this investigation should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing the required letter of appearance). Note that Commerce has modified its regulations to make permanent certain changes to its service procedures that were adopted on a temporary basis due to COVID–19, as well as to make additional clarifications and corrections to its AD/CVD regulations.[51]

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: November 6, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Investigation

The scope of the investigation covers truck and bus tires. Truck and bus tires are new pneumatic tires, of rubber, with a truck or bus size designation. Truck and bus tires covered by the scope may be tube-type, tubeless, radial, or non-radial (also known as bias construction or bias-ply).

Subject tires have, at the time of importation, the symbol ''DOT'' on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have one of the following suffixes in their tire size designation, which also appear on the sidewall of the tire:

TR—Identifies tires for service on trucks or buses to differentiate them from similarly sized passenger car and light truck tires; and

HC—Identifies a 17.5 inch rim diameter code for use on low platform trailers.

All tires with a ''TR'' or ''HC'' suffix in their size designations are covered by the scope regardless of their intended use.

In addition, all tires that lack one of the above suffix markings are included in the scope, as well as all tires that include any other prefix or suffix in their sidewall markings, are included in the scope, regardless of their intended use, as long as the tire is of a size that fits trucks or busses. Sizes that fit trucks and busses include, but are not limited to, the numerical size designations listed in the ''Truck-Bus'' section of the *Tire and Rim Association Year Book,* as updated annually. The scope includes all tires that are of a size that fits trucks or busses, unless the tire falls within one of the specific exclusions set out below.

Truck and bus tires, whether or not mounted on wheels or rims, are included in the scope. However, if a subject tire is imported mounted on a wheel or rim, only the tire is covered by the scope. Subject merchandise includes truck and bus tires produced in the subject country whether mounted on wheels or rims in the subject country or in a third country. Truck and bus tires are covered whether or not they are accompanied by other parts, *e.g.,* a wheel, rim, axle parts, bolts, nuts, *etc.* Truck and bus tires that enter attached to a vehicle are not covered by the scope.

Specifically excluded from the scope are the following types of tires: (1) pneumatic tires, of rubber, that are not new, including recycled and retreaded tires; (2) non-pneumatic tires, such as solid rubber tires; and (3) tires that exhibit each of the following physical characteristics: (a) the designation ''MH'' is molded into the tire's sidewall as part of the size designation; (b) the tire incorporates a warning, prominently molded on the sidewall, that the tire is for ''Mobile Home Use Only;'' and (c) the tire is of bias construction (also known as non-radial construction) as evidenced by the fact that the construction code included in the size designation molded into the tire's sidewall is not the letter ''R.''

The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.1015 and 4011.20.5020. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.90.1010, 4011.90.1050, 4011.90.2010, 4011.90.2050, 4011.90.8010, 4011.90.8050, 8708.70.4530, 8708.70.4546, 8708.70.4548, 8708.70.4560, 8708.70.6030, 8708.70.6045, 8708.70.6060, and 8716.90.5059.

While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

[FR Doc. 2023–24994 Filed 11–13–23; 8:45 am]

BILLING CODE 3510–DS–P

[49] *See* section 782(b) of the Act.

[50] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[51] Effective October 30, 2023, these changes will apply to all AD/CVD proceedings that are ongoing on the effective date and all AD/CVD proceedings initiated on or after the effective date. *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069 (September 29, 2023).

DEPARTMENT OF COMMERCE

International Trade Administration

Meeting of the President's Export Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The President's Export Council (Council) will hold a meeting to deliberate on recommendations related to promoting the expansion of U.S. exports. Meeting topics will include strengthening U.S. leadership in clean technologies and climate solutions, promoting U.S. agricultural trade, and enhancing U.S. manufacturing competitiveness. The final agenda will be posted at least one week in advance of the meeting on the President's Export Council website at *https://www.trade.gov/presidents-export-council.*

DATES: November 29, 2023 at 9:30 a.m. ET.

ADDRESSES: The President's Export Council meeting will be broadcast via live webcast on the internet. Please visit the Council's website at *https://www.trade.gov/presidents-export-council* for the link to the live webcast on the day of the meeting.

FOR FURTHER INFORMATION CONTACT: Tricia Van Orden, Designated Federal Officer, President's Export Council, Room 3424, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: 202–482–5876, email: *tricia.vanorden@trade.gov.*

Press inquiries should be directed to the International Trade Administration's Office of Public Affairs, telephone: 202–482–3809.

SUPPLEMENTARY INFORMATION:

Background: The President's Export Council was first established by Executive Order on December 20, 1973 to advise the President on matters relating to U.S. export trade and to report to the President on its activities and recommendations for expanding U.S. exports. The President's Export Council was renewed most recently by Executive Order 14109 of September 29, 2023, for the two-year period ending September 30, 2025. This Committee is governed in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. 1001 *et seq.*

Public Submissions: The public is invited to submit written statements to the President's Export Council. Statements must be received by 5 p.m. ET on November 27, 2023 by the following methods:

a. Electronic Submissions

Submit statements electronically to Tricia Van Orden, Designated Federal Officer, President's Export Council via email: *tricia.vanorden@trade.gov.*

b. Paper Submissions

Send paper statements to Tricia Van Orden, Designated Federal Officer, President's Export Council, Room 3424, 1401 Constitution Avenue NW, Washington, DC 20230.

Statements will be posted on the President's Export Council website (*https://www.trade.gov/presidents-export-council*) without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make publicly available.

Meeting minutes: Copies of the Council's meeting minutes will be available within ninety (90) days of the meeting.

Dated: November 8, 2023.

Tricia Van Orden,

Designated Federal Officer, President's Export Council.

[FR Doc. 2023–25019 Filed 11–13–23; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–051]

Certain Hardwood Plywood Products From the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Determination of Antidumping Duty Investigation; Notice of Amended Determination Pursuant to Court Decision; and Notice of Revocation of Antidumping Duty Order, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On October 10, 2023, the U.S. Court of International Trade (CIT) issued its final judgment in *Linyi Chengen Import and Export Co., Ltd., et al.,* v. *United States,* Consol. Court no. 18–00002, sustaining the U.S. Department of Commerce (Commerce)'s fifth remand results of redetermination pertaining to the less-than-fair-value (LTFV) antidumping duty investigation of certain hardwood plywood products (hardwood plywood) from the People's Republic of China (China). Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final LTFV determination. Consequently, the final antidumping duty margin calculated for mandatory respondent Linyi Chengen Import and Export Co., Ltd. (Chengen) is now zero percent and the rate assigned to the companies who received separate rates and are party to this litigation (Separate Rate Plaintiffs) is the rate assigned to Chengen, zero percent. In addition, because the final margin assigned to Chengen and the two companies that requested voluntary respondent treatment and submitted all of the threshold information necessary to be eligible for voluntary respondent treatment, Zhejiang Dehua TB Import & Export Co. (Dehua TB) and Xuzhou Jiangyang Wood Industries, Co., Ltd. (Jiangyang), is zero, Chengen, Dehua TB, and Jiangyang, in the exporter-producer combinations assigned in the investigation, are excluded from the *Order.*

DATES: Applicable October 20, 2023.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2953.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 2016, Commerce initiated an LTFV investigation on plywood from China,[1] and we issued our *Final Determination* in this investigation in November 2017.[2] In the *Final Determination,* Commerce calculated the normal value (NV) for mandatory respondent Chengen by applying the ''intermediate input'' methodology and valuing Chengen's consumption of wood veneers,[3] rather than by valuing Chengen's consumption of wood logs.[4] Commerce further assigned to the companies eligible for a separate rate, in combination with their suppliers, an estimated weighted-average dumping margin based on Chengen's estimated weighted-average dumping margin.[5]

In *Linyi Chengen Imp. & Exp. Co.* v. *United States,* 391 F. Supp. 3d 1283 (CIT 2019) (*Remand Order I*), the CIT requested further explanation regarding our *Final Determination.* On remand, Commerce provided further explanation and continued to apply the intermediate input methodology, as in the underlying *Final Determination,* and made no change to the estimated weighted-average dumping margin calculated for Chengen and assigned to the Separate Rate Plaintiffs.[6]

In its *Remand Order II,* the CIT found Commerce's explanation contrary to law and instructed it to accept certain information previously not permitted on the record.[7] On remand and under respectful protest, Commerce accepted this new factual information from Chengen, reconsidered the application of the intermediate input methodology to Chengen, and calculated an estimated weighted-average dumping margin based on the valuation of Chengen's log FOPs, which resulted in an estimated weighted-average dumping margin for Chengen of zero percent.[8] Because Chengen received a zero percent rate, Commerce explained that it intended to exclude hardwood plywood produced by Linyi Dongfangjuxin Wood Co., Ltd. (Dongfangjuxin) and exported by Chengen from the *Order.*[9] In addition, Commerce revised the estimated weighted-average dumping margin for the China-wide entity to be equal to the highest dumping margin alleged in the Petition, 114.72 percent,[10] and revised the estimated weighted-average dumping margin assigned to the Separate Rate Plaintiffs by averaging Chengen's zero percent rate with the

[1] *See Certain Hardwood Plywood Products from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 81 FR 91125 (December 16, 2016).

[2] *See Certain Hardwood Plywood Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part,* 82 FR 53460 (November 16, 2017) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM).

[3] Commerce's general practice in non-market economy proceedings, consistent with section 773(c)(1)(B) of the Tariff Act of 1930, as amended (the Act), is to calculate NV using the factors of production (FOP) that a respondent consumes to produce a unit of the subject merchandise. There are circumstances, however, in which Commerce will modify its standard FOP methodology, choosing instead to apply a surrogate value to an intermediate input instead of the individual FOPs used to produce that intermediate input. *See Final Determination* IDM at Comment 2.

[4] *See Final Determination* IDM; *see also Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 83 FR 504 (January 4, 2018) (*Order*).

[5] *See Final Determination,* 82 FR at 53462.

[6] *See Final Results of Redetermination Pursuant to Court Remand, Linyi Chengen Import and Export Co., Ltd., et al.* v. *United States, Court No. 18–00002,* Slip Op. 19–67 (CIT June 3, 2019), dated August 23, 2019. For a list of these companies, *see* Appendix to this notice; *see also Linyi Chengen Import and Export Co., Ltd., et al.* v. *United States,* 487 F. Supp. 3d 1349 (CIT 2020) (*Remand Order III*).

[7] *See Linyi Chengen Import and Export Co., Ltd., et al.* v. *United States,* 433 F. Supp. 3d 1278, 1286 (CIT 2020) (*Remand Order II*), at 1.

[8] *See Final Results of Redetermination Pursuant to Court Remand, Linyi Chengen Import and Export Co., Ltd., et al.* v. *United States,* Court No. 18–00002, Slip Op. 20–22 (CIT February 20, 2020), dated June 18, 2020 (*Redetermination II*).

[9] *See Redetermination II* at 53.

[10] *Id.* at 15 and Issue 3; *see also* Petitioner's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties,'' dated November 18, 2016 (Petition).

rate assigned to the China-wide entity, 57.36 percent.[11]

In its *Remand Order III,*[12] the CIT sustained Commerce's revised estimated weighted-average dumping margin for Chengen but requested further explanation of its calculation of the rate applied to the Separate Rate Plaintiffs.[13] In *Redetermination III,*[14] Commerce provided additional explanation concerning its conclusions in *Redetermination II* and made no changes to its calculation of the estimated dumping margin for the Separate Rate Plaintiffs.

In its *Remand Order IV,*[15] the Court held that Commerce's selection of the all-others separate rate was not reasonable and was not supported by substantial evidence and remanded the assignment of the separate rate to Commerce.[16] In *Redetermination IV,* Commerce reviewed the record and provided further explanation why it continued to reasonably apply the simple average of the AFA rate and the zero percent rate calculated for Chengen.[17]

In its *Remand Order V,*[18] the Court held that Commerce's selection of the 57.36 percent rate assigned to the Separate Rate Plaintiffs was unreasonable as applied and not supported by substantial evidence.[19] The Court instructed Commerce to reconsider the all-others separate rate consistent with its opinion, including whether other evidence on the record supports a lower rate after the applicable rates are averaged.[20] In *Redetermination V,* Commerce, determined, under protest, to apply Chengen's zero percent rate to the Separate Rate Plaintiffs.[21] Commerce also determined to exclude from the *Order* the exporter/producer combinations assigned to Jiangyang and Dehua TB, the only two companies that provided all information required to be eligible for consideration as voluntary respondents.[22]

Timken Notice

In its decision in *Timken,*[23] as clarified by *Diamond Sawblades,*[24] the U.S. Court of Appeals for the Federal Circuit held that, pursuant to sections 516A(c) and (e) of the Act, Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's October 10, 2023, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Determination.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Determination

Because there is now a final court judgment, Commerce is amending the *Order* with respect Chengen, Dehua TB, Jiangyang, the China-wide entity, and the Separate Rate Plaintiffs. The revised weighted-average dumping margins for Chengen, Dehua TB, Jiangyang, the China-wide entity, and the Separate Rate Plaintiffs for the period April 1, 2016, through September 30, 2016, are as follows:

Exporter	Producer	Estimated dumping margin (percent)	Cash deposit rate (percent)
Linyi Chengen Import and Export Co., Ltd	Linyi Dongfangjuxin Wood Co., Ltd	0.00	N/A
Xuzhou Jiangyang Wood Industries Co., Ltd	Xuzhou Jiangyang Wood Industries Co., Ltd	0.00	N/A
Zhejiang Dehua TB Import & Export Co., Ltd	Dehua TB New Decoration Material Co., Ltd	0.00	N/A
Zhejiang Dehua TB Import & Export Co., Ltd	Zhangjiagang Jiuli Wood Co., Ltd	0.00	N/A
Separate Rate Plaintiffs [25]		0.00	0.00
China-Wide Entity [26]		114.72	114.72

Partial Exclusion From Antidumping Duty Order

Pursuant to section 735(a)(4) of the Act, Commerce ''shall disregard any weighted average dumping margin that is *de minimis* as defined in section 733(b)(3) of the Act.'' [27] Furthermore, section 735(c)(2) of the Act states that ''the investigation shall be terminated upon publication of that negative determination'' and Commerce shall ''terminate the suspension of liquidation'' and ''release any bond or other security, and refund any cash deposit.'' [28] As a result of this amended final determination, in which Commerce has calculated an estimated weighted-average dumping margin of 0.00 percent for Chengen, and assigned Chengen's zero percent rate and eligibility for exclusion under section 735(c)(2) of the Act to Dehua TB and Jiangyang, in combination with their suppliers as noted above, Commerce is hereby excluding subject merchandise produced by Dongfangjuxin and exported by Chengen, produced and exported by Jiangyang, and produced by Dehua TB New Decoration Co., Ltd., or Zhangjiagang Jiuli Wood Co., Ltd., and exported by Dehua TB. Accordingly, Commerce will direct U.S. Customs and

[11] *Id.* at 16 and 52. The separate rate is the simple average of the rates determined for Chengen and the China-wide entity. The methodology for calculating this rate is also discussed in the *Preliminary Determination* in the LTFV investigation. *See Certain Hardwood Plywood Products from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part,* 82 FR 28629 (June 23, 2017) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum at 21.

[12] *See Remand Order III.*

[13] *Id.,* 487 F. Supp. 3d at 1358.

[14] *See Final Results of Redetermination Pursuant to Court Remand, Linyi Chengen Import and Export Co., Ltd., et al.* v. *United States,* Court No. 18–00002, Slip Op. 20–183 (CIT December 21, 2020), dated March 22, 2021 (*Redetermination III*), available at *https://access.trade.gov/resources/remands/20-183.pdf.*

[15] *See Linyi Chengen Import and Export Co., Ltd., et al.* v. *United States,* Consol. Ct. No. 18–00002, Slip. Op. 21–127 (CIT September 24, 2021) (*Remand Order IV*).

[16] *Id.* at 18.

[17] *See Final Results of Redetermination Pursuant to Court Remand, Linyi Chengen Import and Export Co., Ltd., et al.* v. *United States,* Court No. 18–00002, Slip Op. 22–150 (CIT December 21, 2022) (*Redetermination IV*) at 9–12.

[18] *See Linyi Chengen Import and Export Co., Ltd., et al.* v. *United States,* Consol. Ct. No. 18–00002, Slip Op. 22–150 (CIT December 21, 2022) (*Remand Order V*).

[19] *See Remand Order V* at 27.

[20] *Id.* at 27–28.

[21] *See Redetermination IV.*

[22] *Id.*

[23] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[24] *See Diamond Sawblades Manufacturers Coalition* v. United States, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[25] *See* Appendix for the exporter/producer combinations whose rates we are revising.

[26] The China-wide entity includes mandatory respondent, Shandong Dongfang Bayley Wood Co., Ltd.

[27] Section 733(b)(3) of the Act defines a *de minimis* dumping margin as ''less than 2 percent ad valorem or the equivalent specific rate for the subject merchandise.''

[28] *See* sections 735(c)(2)(A) and (B) of the Act.

Border Protection (CBP) to release any bonds or other security and refund cash deposits pertaining to any suspended entries attributable to the exporter-producer combinations assigned to Chengen, Dehua TB, and Jiangyang referenced above. This exclusion does not apply to any other companies or exporter-producer combinations.

Liquidation of Suspended Entries

Pursuant to *Timken,* the suspension of liquidation must continue during the pendency of the appeals process. Thus, we will instruct CBP to continue to suspend liquidation of all unliquidated entries under the applicable exporter-producer combinations for Chengen, Dehua TB, Jiangyang, and Separate Rate Plaintiffs [29] at a cash deposit rate of 0.00 percent which are entered, or withdrawn from warehouse, for consumption after October 20, 2023, which is ten days after the CIT's final decision, in accordance with section 516A of the Act.[30] If the CIT's ruling is not appealed, or if appealed and upheld, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate entries from the exporter-producer combinations assigned to Chengen, Dehua TB, Jiangyang without regard to antidumping duties. In addition, Commerce will instruct CBP to terminate suspension and to liquidate entries from the exporter-producer combinations assigned to the Separate Rate Plaintiffs without regard to antidumping duties for all completed reviews of this *Order,* except where those Separate Rate Plaintiffs were subsequently assigned an above-*de minimis* margin or lost their separate rate. As a result of the exclusion, Commerce will not initiate any new administrative reviews of entries from the exporter-producer combinations assigned to Chengen, Dehua TB, or Jiangyang, pursuant to the *Order.*

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: November 6, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Separate Rate Plaintiffs

Exporter name	Manufacturer name
Linyi Chengen Import and Export Co., Ltd	Linyi Dongfangjuxin Wood Co., Ltd.
Anhui Hoda Wood Co., Ltd	Feixian Jianxin Board Factory.
Anhui Hoda Wood Co., Ltd	Linyi Xicheng Wood Co., Ltd.
Anhui Hoda Wood Co., Ltd	Linyi Longxin Wood Co., Ltd.
Anhui Hoda Wood Co., Ltd	Fengxian Jihe Wood Co., Ltd.
Anhui Hoda Wood Co., Ltd	Xuzhou Chunyiyang Wood Co., Ltd.
Anhui Hoda Wood Co., Ltd	Linyi Lanshan District Xiangfeng Decorative Board Factory.
Anhui Hoda Wood Co., Ltd	Linyi Lanshan District Fubai Wood Board Factory.
Anhui Hoda Wood Co., Ltd	Shandong Jubang Wood Co., Ltd.
Anhui Hoda Wood Co., Ltd	Feixian Shangye Town Mingda Multi-Layered Board Factory.
Anhui Hoda Wood Co., Ltd	Xuzhou Dayuan Wood Co., Ltd.
Anhui Hoda Wood Co., Ltd	Linyi Mingzhu Wood Co., Ltd.
Anhui Hoda Wood Co., Ltd	Linyi Renlin Wood Co., Ltd.
Celtic Co., Ltd	Linyi Celtic Wood Co., Ltd.
Celtic Co., Ltd	Pinyi Fuhua Wood Co., Ltd.
Cosco Star International Co., Ltd	Linyi Huasheng Yongbin Wood Corp.
Cosco Star International Co., Ltd	Suining Pengxiang Wood Co., Ltd.
Cosco Star International Co., Ltd	Pizhou Jiangshan Wood Co., Ltd.
Cosco Star International Co., Ltd	Shandong Union Wood Co. Ltd.
Cosco Star International Co., Ltd	Linyi Sanfortune Wood Co. Ltd.
Cosco Star International Co., Ltd	Shandong Anxin Timber Co., Ltd.
Cosco Star International Co., Ltd	Linyi Evergreen Wood Co., Ltd.
Cosco Star International Co., Ltd	Shandong Huaxin Jiasheng Wood Co., Ltd.
Cosco Star International Co., Ltd	Xuzhou Shenghe Wood Co., Ltd.
Cosco Star International Co., Ltd	Pingyi Jinniu Wood Co., Ltd.
Cosco Star International Co., Ltd	Linyi Celtic Wood Co., Ltd.
Cosco Star International Co., Ltd	Linyi Laiyi Timber Industry Co., Ltd.
Cosco Star International Co., Ltd	Feixian Hongqiang Wood Co., Ltd.
Cosco Star International Co., Ltd	Feixian Xingying Wood Co., Ltd.
Cosco Star International Co., Ltd	Linyi City Lanshan District Fubo Wood Factory.
Golder International Trade Co., Ltd	Fengxian Fangyuan Wood Co., Ltd.
Huainan Mengping Import and Export Co., Ltd	Linyi Qianfeng Panel Factory Co., Ltd.
Jiangsu Top Point International Co., Ltd	Linyi Jinkun Wood Co., Ltd.
Jiangsu Top Point International Co., Ltd	Feixian Huafeng Wood Co., Ltd.
Jiangsu Top Point International Co., Ltd	Feixian Fuyang Plywood Factory.
Jiaxing Gsun Imp. & Exp. Co., Ltd	Fengxian Hengyuan Wood Industry Co., Ltd.
Jiaxing Gsun Imp. & Exp. Co., Ltd	Feixian Junyang Wood Industry Co., Ltd.
Jiaxing Gsun Imp. & Exp. Co., Ltd	Feixian Junbang Wood Factory.
Jiaxing Gsun Imp. & Exp. Co., Ltd	Linyi City Lanshan District Mingda Wood Factory.
Jiaxing Gsun Imp. & Exp. Co., Ltd	Feixian Hongyun Wood Factory.
Jiaxing Gsun Imp. & Exp. Co., Ltd	Linyi City Lanshan District Xiangfeng Wood Decoration Factory.
Jiaxing Gsun Imp. & Exp. Co., Ltd	Shandong Jubang Wood Co., Ltd.

[29] This only applies to Separate Rate Plaintiffs who were not assigned an above *de minimis* antidumping duty margin, or who lost their separate rate status, after the LTFV investigation.

[30] *See, e.g., Drill Pipe from the People's Republic of China: Notice of Court Decision Not in Harmony with International Trade Commission's Injury Determination, Revocation of Antidumping and Countervailing Duty Orders Pursuant to Court Decision, and Discontinuation of Countervailing Duty Administrative Review,* 79 FR 78037, 78038 (December 29, 2014); and *High Pressure Steel Cylinders From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Determination in Less Than Fair Value Investigation, Notice of Amended Final Determination Pursuant to Court Decision, Notice of Revocation of Antidumping Duty Order in Part, and Discontinuation of Fifth Antidumping Duty Administrative Review,* 82 FR 46758, 46760 (October 6, 2017).

Exporter name	Manufacturer name
Jiaxing Gsun Imp. & Exp. Co., Ltd	Feixian Yixin Wood Processing Factory.
Jiaxing Gsun Imp. & Exp. Co., Ltd	Pizhou Wantai Wood Industry Co., Ltd.
Jiaxing Gsun Imp. & Exp. Co., Ltd	Feixian Fengxiang Wood Processing Factory.
Jiaxing Gsun Imp. & Exp. Co., Ltd	Shandong Compete Wood Co., Ltd.
Jiaxing Gsun Imp. & Exp. Co., Ltd	Linyi Kunyu Plywood Factory.
Jiaxing Hengtong Wood Co., Ltd	Jiaxing Hengtong Wood Co., Ltd.
Lianyungang Yuantai International Trade Co., Ltd	Xinyi Chaohua Wood Co., Ltd.
Lianyungang Yuantai International Trade Co., Ltd	Linyi Huasheng Yongbin Wood Corp.
Lianyungang Yuantai International Trade Co., Ltd	Linyi City Lanshan District Fubo Wood Factory.
Lianyungang Yuantai International Trade Co., Ltd	Fei County Hongsheng Wood Co., Ltd.
Lianyungang Yuantai International Trade Co., Ltd	Xuzhou Hongwei Wood Co., Ltd.
Lianyungang Yuantai International Trade Co., Ltd	Pizhou Jinguoyuan Wood Co., Ltd.
Lianyungang Yuantai International Trade Co., Ltd	Feixian Wanda Wood Co., Ltd.
Lianyungang Yuantai International Trade Co., Ltd	Linyi City Lanshan District Fuerda Wood Factory.
Lianyungang Yuantai International Trade Co., Ltd	Shandong Jubang Wood Co., Ltd.
Lianyungang Yuantai International Trade Co., Ltd	Feixian Hongyun Wood Factory.
Lianyungang Yuantai International Trade Co., Ltd	Linyi City Lanshan District Xiangfeng Wood Decoration Factory.
Lianyungang Yuantai International Trade Co., Ltd	Linyi Renlin Wood Industry Co., Ltd.
Lianyungang Yuantai International Trade Co., Ltd	Linyi City Lanshan District Mingda Wood Factory.
Linyi City Dongfang Fukai Wood Industry Co., Ltd	Linyi City Dongfang Fukai Wood Industry Co., Ltd.
Linyi City Dongfang Jinxin Economic and Trade Co., Ltd	Linyi City Dongfang Jinxin Economic and Trade Co., Ltd.
Linyi City Shenrui International Trade Co., Ltd	Linyi City Dongfang Fuchao Wood Co., Ltd.
Linyi Dahua Wood Co., Ltd	Linyi Dahua Wood Co., Ltd.
Linyi Evergreen Wood Co., Ltd	Linyi Evergreen Wood Co., Ltd.
Linyi Glary Plywood Co., Ltd	Linyi Glary Plywood Co., Ltd.
Linyi Hengsheng Wood Industry Co., Ltd	Linyi Hengsheng Wood Industry Co., Ltd.
Linyi Huasheng Yongbin Wood Co., Ltd	Linyi Huasheng Yongbin Wood Co., Ltd.
Linyi Jiahe Wood Industry Co., Ltd	Linyi Jiahe Wood Industry Co., Ltd.
Linyi Linhai Wood Co., Ltd	Linyi Linhai Wood Co., Ltd.
Linyi Mingzhu Wood Co., Ltd	Linyi Mingzhu Wood Co., Ltd.
Linyi Sanfortune Wood Co., Ltd	Linyi Sanfortune Wood Co., Ltd.
Pingyi Jinniu Wood Co., Ltd	Pingyi Jinniu Wood Co., Ltd.
Qingdao Good Faith Import and Export Co., Ltd	Linyi Fubo Wood Co., Ltd.
Qingdao Good Faith Import and Export Co., Ltd	Linyi Tuopu Zhixin Wooden Industry Co., Ltd.
Qingdao Good Faith Import and Export Co., Ltd	Linyi Haisen Wood Co., Ltd.
Qingdao Good Faith Import and Export Co., Ltd	Linyi Jubang Wood Co., Ltd.
Qingdao Good Faith Import and Export Co., Ltd	Xuzhou Changcheng Wood Co., Ltd.
Qingdao Good Faith Import and Export Co., Ltd	Xuzhou Jinguoyuan Wood Co., Ltd.
Qingdao Good Faith Import and Export Co., Ltd	Xuzhou Xuexin Wood Co., Ltd.
Qingdao Good Faith Import and Export Co., Ltd	Anhui Fuyang Qinglin Wood Products Co., Ltd.
Qingdao Good Faith Import and Export Co., Ltd	Anhui Huijin Wood Co., Ltd.
Qingdao Good Faith Import and Export Co., Ltd	Anhui Lingfeng Wood Co., Ltd.
Qingdao Good Faith Import and Export Co., Ltd	Suzhou Dongsheng Wood Co., Ltd.
Qingdao Good Faith Import and Export Co., Ltd	Pizhou Zhongxin Wood Co., Ltd.
Qingdao Good Faith Import and Export Co., Ltd	Xuzhou Spring Art Yang Wood Industry Co., Ltd.
Qingdao Top P&Q International Corp	Yutai Zezhong Wood Products Co., Ltd.
Qingdao Top P&Q International Corp	Feixian Tanyi Youchengjiafu Wood Products Co., Ltd.
Qingdao Top P&Q International Corp	Linyi Qianfeng Wood Products Co., Ltd.
Qingdao Top P&Q International Corp	Xuzhou Chunyiyang Wood Products Co. Ltd.
Qingdao Top P&Q International Corp	Linyi Longxin Wood Products Co., Ltd.
Qingdao Top P&Q International Corp	Linyi Lanshan Wanmei Wood Factory.
Qingdao Top P&Q International Corp	Di Birch Wood Industry Co., Ltd.
Qingdao Top P&Q International Corp	Shandong Junxing Wood Products Co., Ltd.
Qingdao Top P&Q International Corp	Anhui Qinglin Wood Products Co., Ltd.
Qingdao Top P&Q International Corp	Linyi Fuerda Wood Products Co., Ltd.
Qingdao Top P&Q International Corp	Fengxian Shuangxingyuan Wood Co., Ltd.
Shandong Qishan International Trading Co., Ltd	Linyi Tuopu Zhixin Wooden Industry Co., Ltd.
Shanghai Futuwood Trading Co., Ltd	Linyi Jinghua Wood Industry Co., Ltd.
Shanghai Futuwood Trading Co., Ltd	Linyi Lianbang Wood Industry Co., Ltd.
Shanghai Futuwood Trading Co., Ltd	Linyi Huada Wood Industry Co., Ltd.
Shanghai Futuwood Trading Co., Ltd	Linyi Jinkun Wood Industry Co., Ltd.
Shanghai Futuwood Trading Co., Ltd	Linyi Yuqiao Board Factory.
Shanghai Futuwood Trading Co., Ltd	Linyi Laite Board Factory.
Shanghai Futuwood Trading Co., Ltd	Linyi Tuopu Zhixin Wooden Industry Co., Ltd.
Shanghai Futuwood Trading Co., Ltd	Feixian Huafeng Wood Industry Co., Ltd.
Shanghai Futuwood Trading Co., Ltd	Xuzhou Shuangxingyuan Wood Industry Co., Ltd.
Shanghai Futuwood Trading Co., Ltd	Linyi Youcheng Jiafu Wood Industry Co., Ltd.
Shanghai Futuwood Trading Co., Ltd	Shandong Qingyuan Wood Industry Co., Ltd.
Shanghai Futuwood Trading Co., Ltd	Linyi Lanshan Jinhao Board Factory.
Shanghai Futuwood Trading Co., Ltd	Linyi Lanshan Fubai Wood Industry Board Factory.
Shanghai Futuwood Trading Co., Ltd	Siyang Dazhong Wood Product Factory.
Shanghai Futuwood Trading Co., Ltd	Binzhou Yongsheng Artificial Board Industrial Trade Co., Ltd.
Shanghai Futuwood Trading Co., Ltd	Shandong Jinqiu Wood Industry Co., Ltd.
Shanghai Futuwood Trading Co., Ltd	Linyi Senpeng Wood Industry Co., Ltd.

Exporter name	Manufacturer name
Shanghai Futuwood Trading Co., Ltd	Xuzhou Heng'an Wood Industry Co., Ltd.
Shanghai Futuwood Trading Co., Ltd	Dangshan Weidi Wood Industry Co., Ltd.
Shanghai Futuwood Trading Co., Ltd	Fengxian Jihe Wood Industry Co., Ltd.
Shanghai Futuwood Trading Co., Ltd	Yutai Zezhong Wood Industry Co., Ltd.
Shanghai Futuwood Trading Co., Ltd	Linyi Huasheng Yongbin Wood Co., Ltd.
Shanghai Futuwood Trading Co., Ltd	Linyi Kaifeng Wood Board Factory.
Shanghai Futuwood Trading Co., Ltd	Linyi Mingda Wood Industry Co., Ltd.
Shanghai Futuwood Trading Co., Ltd	Yangxin County Xintong Decorative Materials Co., Ltd.
Shanghai Futuwood Trading Co., Ltd	Pingyi County Zhongli Wood Products Factory.
Shanghai Futuwood Trading Co., Ltd	Pingyi County Yuxin Board Factory.
Shanghai Futuwood Trading Co., Ltd	Linyi Mingzhu Wood Co., Ltd.
Suining Pengxiang Wood Co., Ltd	Suining Pengxiang Wood Co., Ltd.
Sumec International Technology Co., Ltd	Shandong Junxing Wood Industry Co., Ltd.
Sumec International Technology Co., Ltd	Linyi Xicheng Wood Industry Co., Ltd.
Sumec International Technology Co., Ltd	Linyi City Lanshan District Linyu Board Factory.
Suqian Hopeway International Trade Co., Ltd	Xuzhou Henglin Wood Co., Ltd.
Suqian Hopeway International Trade Co., Ltd	Qufu Shengda Wood Co., Ltd.
Suqian Hopeway International Trade Co., Ltd	Pizhou Xuexin Wood Products Co., Ltd.
Suqian Hopeway International Trade Co., Ltd	Pizhou Jiangshan Wood Co., Ltd.
Suqian Hopeway International Trade Co., Ltd	Shandong Union Wood Co., Ltd.
Suqian Hopeway International Trade Co., Ltd	Linyi City Lanshan District Fubo Wood Factory.
Suqian Hopeway International Trade Co., Ltd	Linyi Mingzhu Wood Co., Ltd.
Suqian Hopeway International Trade Co., Ltd	Suzhou Dongsheng Wood Co., Ltd.
Suqian Hopeway International Trade Co., Ltd	Linyi Jiahe Wood Industry Co., Ltd.
Suqian Hopeway International Trade Co., Ltd	Linyi Dahua Wood Co., Ltd.
Suzhou Dongsheng Wood Co., Ltd	Suzhou Dongsheng Wood Co., Ltd.
Suzhou Fengshuwan Import and Exports Trade Co., Ltd	Xuzhou Henglin Wood Co., Ltd.
Suzhou Fengshuwan Import and Exports Trade Co., Ltd	Linyi Mingzhu Wood Co., Ltd.
Suzhou Fengshuwan Import and Exports Trade Co., Ltd	Linyi Jiahe Wood Industry Co., Ltd.
Suzhou Oriental Dragon Import and Export Co., Ltd	Linyi Tiancai Timber Co., Ltd.
Suzhou Oriental Dragon Import and Export Co., Ltd	Lingyi Huasheng Yongbin Wood Co., Ltd.
Suzhou Oriental Dragon Import and Export Co., Ltd	Linyi Xicheng Wood Products Co., Ltd.
Suzhou Oriental Dragon Import and Export Co., Ltd	Linyi Longxin Wood Co., Ltd.
Suzhou Oriental Dragon Import and Export Co., Ltd	Linyi Oriental Fuchao Wood Co., Ltd.
Suzhou Oriental Dragon Import and Export Co., Ltd	Linyi Qianfeng Wood Co., Ltd.
Suzhou Oriental Dragon Import and Export Co., Ltd	Feixian Wanda Wood Factory.
Suzhou Oriental Dragon Import and Export Co., Ltd	Shandong Union Wood Co., Ltd.
Suzhou Oriental Dragon Import and Export Co., Ltd	Shandong Jinqiu Wood Corporation.
Suzhou Oriental Dragon Import and Export Co., Ltd	Yinhe Machinery Chemical Limited Company Of Shandong Province.
Suzhou Oriental Dragon Import and Export Co., Ltd	Linyi City Yongsen Wood Corp.
Suzhou Oriental Dragon Import and Export Co., Ltd	Xuzhou Changcheng Wood Co., Ltd.
Suzhou Oriental Dragon Import and Export Co., Ltd	Pizhou Fushen Wood Co., Ltd.
Suzhou Oriental Dragon Import and Export Co., Ltd	Pizhou Yuanxing Wood Co., Ltd.
Suzhou Oriental Dragon Import and Export Co., Ltd	Xuzhou Yuantai Wood Co., Ltd.
Suzhou Oriental Dragon Import and Export Co., Ltd	Xuzhou Hongfu Wood Co., Ltd.
Suzhou Oriental Dragon Import and Export Co., Ltd	Feng County Shuangxingyuan Wood.
Suzhou Oriental Dragon Import and Export Co., Ltd	Anhui Fuyang Qinglin Wood Products Co., Ltd.
Suzhou Oriental Dragon Import and Export Co., Ltd	Linyi Dahua Wood Co., Ltd.
Suzhou Oriental Dragon Import and Export Co., Ltd	Juxian Dechang Wood Co., Ltd.
Suzhou Oriental Dragon Import and Export Co., Ltd	Feixian Jinhao Wood Board Plant.
Suzhou Oriental Dragon Import and Export Co., Ltd	Siyang Dahua Plywood Plant.
Suzhou Oriental Dragon Import and Export Co., Ltd	Linyi Lanshan District Fubo Woods Factory.
Suzhou Oriental Dragon Import and Export Co., Ltd	Xuzhou Deheng Wood Co., Ltd.
Suzhou Oriental Dragon Import and Export Co., Ltd	Linyi Kaifeng Wood Board Factory.
Suzhou Oriental Dragon Import and Export Co., Ltd	Linyi Zhenyuan Wood Products Co., Ltd.
Suzhou Oriental Dragon Import and Export Co., Ltd	Xuzhou Weilin Wood Co., Ltd.
Suzhou Oriental Dragon Import and Export Co., Ltd	Linyi Tianlu Wood Board Factory.
Suzhou Oriental Dragon Import and Export Co., Ltd	Linyi Baoshan Board Factory.
Suzhou Oriental Dragon Import and Export Co., Ltd	Linyi Mingzhu Wood Co., Ltd.
Suzhou Oriental Dragon Import and Export Co., Ltd	Xinyi Chaohua Wood Co., Ltd.
Suzhou Oriental Dragon Import and Export Co., Ltd	Pizhou Jinguoyuan Wood Co., Ltd.
Suzhou Oriental Dragon Import and Export Co., Ltd	Feng County Jihe Wood Co., Ltd.
Suzhou Oriental Dragon Import and Export Co., Ltd	Dangshan County Weidi Wood Co., Ltd.
Suzhou Oriental Dragon Import and Export Co., Ltd	Zhucheng Runheng Industrial and Trading Co., Ltd.
Xuzhou Andefu Wood Co., Ltd	Fengxian Fangyuan Wood Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Xuzhou Longyuan Wood Industry Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Linyi Changcheng Wood Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Feixian Jinde Wood Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Suzhou Dongsheng Wood Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Fengxian Fangyuan Wood Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Xuzhou City Hengde Wood Products Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Pizhou Jiangshan Wood Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Linyi Huasheng Yongbin Wood Corp.
Xuzhou DNT Commercial Co., Ltd	Pizhou Jinguoyuan Wood Co., Ltd.

Exporter name	Manufacturer name
Xuzhou DNT Commercial Co., Ltd	Linyi Mingzhu Wood Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Linyi Renlin Wood Industry Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Binzhou Yongsheng Artificial Board Industrial & Training Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Xuzhou Zhongcai Wood Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Anhui Xinyuanda Wood Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Shandong Lianbang Wood Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Linyi Xinrui Wood Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Shandong Huashi Lvyuan Wood Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Xuzhou Fuyu Wood Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Linyi Dazhong Wood Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Shandong Junxing Wood Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Linyi City Lanshan District Linyu Plywood Factory.
Xuzhou DNT Commercial Co., Ltd	Linyi City Dongfang Fuchao Wood Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Linyi Dahua Wood Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Linyi Qianfeng Wood Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Xuzhou Zhongtong Wood Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Shandong Oufan Wood Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Shandong Jubang Wood Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Xuzhou Changcheng Wood Products Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Feixian Jinhao Wood Board Plant.
Xuzhou DNT Commercial Co., Ltd	Feixian Huafeng Wood Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Dhanshan County Weidi Wood Co., Ltd.
Xuzhou DNT Commercial Co., Ltd	Xuzhou DNT Commercial Co., Ltd.
Xuzhou Eastern Huatai International Trading Co., Ltd	Linyi Longxin Wood Co., Ltd.
Xuzhou Eastern Huatai International Trading Co., Ltd	Linyi Xicheng Wood Co., Ltd.
Xuzhou Eastern Huatai International Trading Co., Ltd	Xuzhou Hongfu Wood Co., Ltd.
Xuzhou Eastern Huatai International Trading Co., Ltd	Xu Zhou Chang Cheng Wood Co, Ltd.
Xuzhou Jiangyang Wood Industries Co., Ltd	Xuzhou Jiangyang Wood Industries Co., Ltd.
Xuzhou Longyuan Wood Industry Co., Ltd	Xuzhou Longyuan Wood Industry Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Xuzhou Longyuan Wood Industry Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Linyi Changcheng Wood Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Feixian Jinde Wood Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Suzhou Dongsheng Wood Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Fengxian Fangyuan Wood Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Xuzhou City Hengde Wood Products Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Pizhou Jiangshan Wood Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Linyi Huasheng Yongbin Wood Corp.
Xuzhou Pinlin International Trade Co., Ltd	Pizhou Jinguoyuan Wood Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Linyi Mingzhu Wood Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Linyi Renlin Wood Industry Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Binzhou Yongsheng Artificial Board Industrial & Training Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Xuzhou Zhongcai Wood Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Anhui Xinyuanda Wood Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Shandong Lianbang Wood Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Linyi Xinrui Wood Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Shandong Huashi Lvyuan Wood Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Xuzhou Fuyu Wood Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Linyi Dazhong Wood Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Shandong Junxing Wood Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Linyi City Lanshan District Linyu Plywood Factory.
Xuzhou Pinlin International Trade Co., Ltd	Linyi City Dongfang Fuchao Wood Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Linyi Dahua Wood Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Linyi Qianfeng Wood Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Xuzhou Zhongtong Wood Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Shandong Oufan Wood Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Shandong Jubang Wood Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Xuzhou Changcheng Wood Products Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Feixian Jinhao Wood Board Plant.
Xuzhou Pinlin International Trade Co., Ltd	Feixian Huafeng Wood Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Dhanshan County Weidi Wood Co., Ltd.
Xuzhou Pinlin International Trade Co., Ltd	Xuzhou Hongmei Wood Development Co., Ltd.
Xuzhou Shengping Imp and Exp Co., Ltd	Xuzhou Longyuan Wood Industry Co., Ltd.
Xuzhou Shuner Import & Export Trade Co. Ltd	Pizhou Fushen Wood Co. Ltd.
Xuzhou Timber International Trade Co., Ltd	Xuzhou Jiangheng Wood Products Co., Ltd.
Xuzhou Timber International Trade Co., Ltd	Xuzhou Jiangyang Wood Industries Co., Ltd.
Xuzhou Timber International Trade Co., Ltd	Xuzhou Changcheng Wood Co., Ltd.
Xuzhou Timber International Trade Co., Ltd	Fengxian Shuangxingyuan Wood Co., Ltd.
Xuzhou Timber International Trade Co., Ltd	Linyi Mingzhu Wood Co., Ltd.
Xuzhou Timber International Trade Co., Ltd	Linyi City Lanshan District Daqian Wood Board Factory.
Xuzhou Timber International Trade Co., Ltd	Feixian Hongsheng Wood Co., Ltd.
Xuzhou Timber International Trade Co., Ltd	Xuzhou Hongwei Wood Co., Ltd.
Xuzhou Timber International Trade Co., Ltd	Pizhou Jinguoyuan Wood Co., Ltd.
Xuzhou Timber International Trade Co., Ltd	Linyi Qianfeng Wood Factory.
Xuzhou Timber International Trade Co., Ltd	Linyi Renlin Wood Industry Co., Ltd.

Exporter name	Manufacturer name
Xuzhou Timber International Trade Co., Ltd	Xuzhou Senyuan Wood Products Co., Ltd.
Xuzhou Timber International Trade Co., Ltd	Jiangsu Lishun Industrial and Trading Co., Ltd.
Xuzhou Timber International Trade Co., Ltd	Pizhou Xuexin Wood Industry Co., Ltd.
Xuzhou Timber International Trade Co., Ltd	Feixian Hongjing Board Factory.
Xuzhou Timber International Trade Co., Ltd	Xuzhou Jiaqiang Wood Industry Co., Ltd.
Xuzhou Timber International Trade Co., Ltd	Shandong Shelter Forest Products Co., Ltd.
Xuzhou Timber International Trade Co., Ltd	Jiangsu Binsong Wood Co., Ltd.
Zhejiang Dehua Tb Import & Export Co., Ltd	Dehua Tb New Decoration Material Co., Ltd.
Zhejiang Dehua Tb Import & Export Co., Ltd	Zhangjiagang Jiuli Wood Co., Ltd.
Shandong Dongfang Bayley Wood Co., Ltd	Shandong Dongfang Bayley Wood Co., Ltd.
Suining Pengxiang Wood Co., Ltd	Suining Pengxiang Wood Co., Ltd.

[FR Doc. 2023–24996 Filed 11–13–23; 8:45 a.m.]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD491]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Maintenance and Rehabilitation of the Bellingham Shipping Terminal

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the Port of Bellingham to incidentally harass marine mammals during construction activities associated with the Maintenance and Rehabilitation of the Bellingham Shipping Terminal project in Bellingham, WA. There are no changes from the proposed authorization in this final authorization.

DATES: This authorization is effective for 1-year from the date of issuance.

ADDRESSES: Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-port-bellinghams-bellingham-shipping-terminal-bellingham.* In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On May 5, 2023, NMFS received a request from the Port of Bellingham for an IHA to take marine mammals incidental to pile driving and removal. Following NMFS' review of the application, the Port of Bellingham submitted a two revised versions on June 16, 2023 and August 28, 2023. The application was deemed adequate and complete on September 6, 2023. There are no changes from the proposed IHA to the final IHA.

Description of Activity

The Bellingham Shipping Terminal rehabilitation project includes the removal of 36 existing 24-inch (in) diameter (61 centimeter (cm)) steel piles, 15 existing 14-in to 16-in (36 cm to 41 cm) timber fender piles, and 2 existing 18-in to 20-in (46 cm to 51 cm) timber piles. Fifty-six 24-in steel piles will be installed to support the main deck of the shipping terminal and in addition 14, 24-in steel piles will be installed behind the existing bulkhead. The existing fender piles will be replaced by 13 16-in steel H-piles. Two 18-in to 20-in timber piles will be installed on the south portion of the terminal. Vibratory and impact hammers will be used for the installation and removal of all piles (Table 1). Removal of piles will be conducted using a straight pull method or vibratory hammers. After new piles are set with a vibratory hammer, installed piles will be proofed with an impact hammer to verify the structural capacity of the pile embedment. The work will be completed at the existing Bellingham Shipping Terminal in Bellingham, Washington. Work on the terminal will be completed within 1-year over 87 non-consecutive days. Sounds produced by these activities may result in take, by Level A and Level B harassment, of marine mammals located in Bellingham, Washington.

A detailed description of the planned construction project is provided in the **Federal Register** notice for the proposed IHA (88 FR 65953, September 26, 2023). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to the Port of Bellingham was published in the **Federal Register** on

September 26, 2023 (88 FR 65953). That notice described, in detail, the Port of Bellingham's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments.

During the 30-day public comment period, NMFS did not receive any public comments.

Description of Marine Mammals in the Area of Specified Activities

Sections 4 and 5 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species or stocks for which take is expected to be authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated to be authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. 2022 SARs. All values presented in Table 1 are the most recent available at the time of publication (including from the final 2022 SARs) and are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 1—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES [1]

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [2]	Stock abundance (CV, N_{min}, most recent abundance survey) [3]	PBR	Annual M/SI [4]
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Washington Inland Waters	-,-; N	11,233 (0.37, 8,308, 2015).	66	≥7.2
Order Carnivora—Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California Sea Lion	*Zalophus californianus*	U.S.	-,-; N	257,606 (N/A,233,515, 2014).	14,011	>321
Steller Sea Lion	*Eumetopias jubatus*	Eastern	-,-; N	43,201 (N/A, 43,201, 2017).	2,592	112
Family Phocidae (earless seals):						
Harbor Seal	*Phoca vitulina*	Washington Northern Inland Waters.	-, -, N	UNK (UNK, UNK, 1999)	UNK	9.8

[1] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://www.marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/;* Committee on Taxonomy (2022)).
[2] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.
[3] NMFS marine mammal stock assessment reports online at: *https://www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.
[4] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, vessel strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

A detailed description of the of the species likely to be affected by the maintenance and rehabilitation of the Bellingham Shipping Terminal project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (88 FR 65953; September 26, 2023); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65-decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take of Marine Mammals section, and the Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Description of Sounds Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far. The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10 to 20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project will include impact pile driving, vibratory pile driving, and vibratory pile removal. The sounds produced by these activities fall into one of two general sound types: impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998; ANSI, 2005; NMFS, 2018). Non-impulsive sounds (*e.g.,* aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI, 1995; NIOSH, 1998; NMFS, 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 and Southall, *et al.* 2007).

Two types of pile hammers will be used on this project: impact and vibratory. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman, *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson, *et al.,* 2005).

The likely or possible impacts of the Port of Bellingham's activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors include the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature.

Auditory Effects

The introduction of anthropogenic noise into the aquatic environment from pile driving and removal is the primary means by which marine mammals may be harassed from the Port of Bellingham's specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and behavioral effects, ranging in magnitude from none to severe (Southall *et al.,* 2007 and Southall *et al.,* 2021). Exposure to pile driving noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (Ward *et al.,* 1958, 1959; Ward, 1960; Kryter *et al.,* 1966; Miller, 1974; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.,* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2018).

Temporary Threshold Shift (TTS)—A temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (Southall *et al.,* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SELcum) in an accelerating fashion: At low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of

TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and Table 5 in NMFS (2018).

Installing piles requires a combination of impact pile driving and vibratory pile driving. For the project, these activities will not occur at the same time and there will likely be pauses in activities producing the sound during each day. Given these pauses and that many marine mammals are likely moving through the action area and not remaining for extended periods of time, the potential for TS declines.

Behavioral Effects

Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005, Southall *et al.,* 2021).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007, 2021; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within exposures of an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012, Southall *et al.,* 2021), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. For a review of studies involving marine mammal behavioral responses to sound, see Southall *et al.,* 2007; Gomez *et al.,* 2016; and Southall *et al.,* 2021 reviews.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

The area likely impacted by the project is relatively small compared to the available habitat in the surrounding waters of the Salish Sea.

In 2017, the U.S. Navy documented observations of marine mammals during construction activities (*i.e.,* pile driving) at the U.S. Coast Guard Air Station Sector Field Office, Port Angeles, Washington (81 FR 67985, October 3, 2016). This project was roughly 60 miles (mi) (97 kilometers (km)) from the project cite and features that are very similar (*i.e.* a shallow bay of the Salish Sea). In the marine mammal monitoring report for that project (Northwest Environmental Consulting, 2018), 261 harbor seals were observed within the behavioral disturbance zone during pile driving or drilling (*i.e.,* documented as Level B harassment take). Twelve California sea lions and 2 Steller sea lions were observed within the disturbance zone during pile driving activities. Six harbor porpoise were sighted in the Level B harassment zone during construction. No visible signs of disturbance were noted for any of these species that were present in the harassment zones. Given the similarities in activities and habitat and the fact the same species are involved, we expect similar behavioral responses of marine mammals to the specified activity. That is, disturbance, if any, is likely to be temporary and localized (*e.g.,* small area movements). Monitoring reports from other recent pile driving projects have observed similar behaviors.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. Bellingham Bay is home to a busy industrial ports as well as large numbers small private vessels that transit the area on a regular basis; therefore, background sound levels in the bay are already elevated.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving and removal that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that will result in harassment as defined under the MMPA.

Airborne noise will primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels exceeding the acoustic thresholds. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound will cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals will previously have been ''taken'' because of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Marine Mammal Habitat Effects

The effects of underwater noise from the Port of Bellingham's construction activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the project area. The notice of proposed IHA (88 FR 65953; September 26, 2023) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from Port of Bellingham's construction activities on marine mammals and their habitat. That information and analysis is incorporated by reference into this final IHA determination and is not repeated here; please refer to the notice of proposed IHA (88 FR 65953; September 26, 2023).

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes will primarily be by Level B harassment, as use of the construction (*i.e.,* pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for phocids. Auditory injury is unlikely to occur for other authorized species. The mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or to be authorized for this activity. Below we describe how the take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals will be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021; Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 microPascal μPa)) for continuous (*e.g.,* vibratory pile driving) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* impact pile driving) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that will not otherwise occur.

The Port of Bellingham's activity includes the use of continuous (vibratory driving and removal) and impulsive (impact pile driving), and therefore the RMS SPL thresholds of 120 and 160 dB re 1 μPa are applicable. Originally the applicant had recommended a RMS SPL thresholds of 130 1 μPa to predict take by Level B harassment, based on ambient sound measurements in Bassett *et al.* (2010). After further review of measurements in the area, the mean underwater noise levels was 117 re 1 μPa and, therefore, NMFS determined the 120 RMS SPL threshold was more appropriate for calculating the level B harassment zone.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The Port of Bellingham's activity includes the use of (impact pile driving) and non-impulsive (vibratory pile driving and removal) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS Onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW)(Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving, vibratory pile driving and removal). The maximum (underwater) area ensonified above the thresholds for behavioral harassment referenced above is 11.66 km² (7.25 mi²), and will consist of the majority of Bellingham Bay (see Figure 10 in the IHA application). Additionally, vessel traffic and other commercial and industrial activities in the project area may contribute to elevated background noise levels which may mask sounds produced by the project.

Transmission loss (*TL*) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. *TL* parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater *TL* is:

$$TL = B * \text{Log}_{10} (R_1/R_2),$$

where:

TL = transmission loss in dB

B = transmission loss coefficient

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log[range]). A practical spreading value of 15 is often used under conditions, such as the project site, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that will lie between spherical and cylindrical spreading loss conditions. Practical spreading loss is assumed here.

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. In order to calculate the distances to the Level A harassment and the Level B harassment sound thresholds for the methods and piles being used in this project, NMFS used acoustic monitoring data from other locations to develop proxy source levels for the various pile types, sizes and methods. The project includes vibratory and impact pile installation of steel and timber piles and vibratory removal of steel and timber piles. Pile sizes range from 14-in to 24-in, and the applicant has decided to implement mitigation and monitoring measures and take estimates associated with 24-in. piles for all pile types and sizes. Source levels for the 24-in. pile size and driving methods are presented in Table 4. The source levels for vibratory and impact installation of 24-in. steel piles are based on the averaged source level of the same type of pile reported by California Department of Transportation (Caltrans) in pile driving source level compendium documents (Caltrans, 2015, 2020).

TABLE 4—PROXY SOUND SOURCE LEVELS FOR PILE SIZES AND DRIVING METHODS

Pile size	Method	Proxy source level			Literature source
		dB RMS re 1μPa	dB SEL re 1μPa²sec	dB peak re 1μPa	
24 in	Vibratory	166	N/A	N/A	Caltrans 2020.
24 in	Impact	190	174	203	Caltrans 2015.

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as impact or vibratory pile driving and removal, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it will be expected to incur PTS. Inputs used in the optional User Spreadsheet tool, and the resulting estimated isopleths, are reported below.

Although many different pile types and sizes are to be used during the construction project, the Port of Bellingham is implementing mitigation and reporting measures and take estimates for the 24-in. steel pipe piles. Use of this pile size results in the largest Level A and Level B harassment zones and most conservative mitigation measures. Therefore the only calculations the applicant ran were using the 24-in. piles. The applicant also plans to limit the number of impact strikes per day for all piles to 1,725 and the vibratory install of all piles to 90 minutes per day and the vibratory removal of all piles to 30 minutes per day.

TABLE 5—USER SPREADSHEET INPUT PARAMETERS USED FOR CALCULATING LEVEL A HARASSMENT ISOPLETHS

Pile size and installation method	Spreadsheet tab used	Weighting factor adjustment (kHz)	Number of strikes per pile	Number of piles per day	Activity duration (minutes)
24-in vibratory installation	A.1 Vibratory pile driving	2.5	N/A	1	90
24-in vibratory removal	A.1 Vibratory pile driving	2.5	N/A	1	30
24-in impact installation	E.1 Impact pile driving	2	1,725	1	N/A

TABLE 6—CALCULATED LEVEL A AND LEVEL B HARASSMENT ISOPLETHS

Activity	Level A harassment zone (m)			Level B harassment zone (m)
	HF-cetaceans	Phocids	Otariids	
24-in vibratory installation	29	12	1	11,659
24-in vibratory removal (temporary)	14	6	1	
24-in impact installation (1 pile per day; 1,725 strikes per pile)	430	193	14	25

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations.

When available, peer-reviewed scientific publications were used to estimate marine mammal abundance in the project area. Some data from monitoring reports from previous projects near Bellingham Bay were used. However, scientific surveys and resulting data, such as population estimates, densities, and other quantitative information, are lacking for some marine mammal populations. Therefore, the applicant gathered qualitative information from discussions with knowledgeable local people in the Bellingham Bay area.

Here we describe how the information provided is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and for authorization. Since reliable densities are not available, the applicant requests take based on the maximum number of animals that may occur in the harbor in a specified measure of time multiplied by the total duration of the activity.

Harbor Porpoise

The applicant did not initially request take of harbor porpoise for this project. Harbor porpoises are known to be an inconspicuous species and are challenging for protected species observers (PSOs) to sight, making any approach to a specific area potentially difficult to detect. Because harbor porpoises move quickly and elusively, it is possible that they may enter the Level B harassment zone during vibratory pile driving and removal. NMFS reviewed monitoring data from the 2017 U.S. Navy construction project at the Coast Guard Air Station in Port Angeles, Washington in order to determine a take estimate for harbor porpoise.

During that project the Level B harassment zone was 13.6 km (8.6 mi) which could only partially be observed by monitors during the project. Therefore, take estimates were extrapolated from the observations to account for unobserved area where take may have occurred. It was assumed that 87 takes by Level B harassment may have occurred in the unobserved area, for a total of 93 takes during the project. Given 93 total takes it was expected that 3 harbor porpoise were taken per day during the construction project (Northwest Environmental Consulting, 2018). Thus, NMFS recommended 3 animals per day for a total of 261 takes by Level B harassment.

The largest Level A harassment zone results from impact driving of 24-in piles, and extends 430 m from the source for high frequency cetaceans (Table 7). The Port of Bellingham will implement a shutdown zone for harbor porpoises that encompasses the largest Level A harassment zone (see Mitigation section). Although harbor porpoises can be challenging to observe, given the relatively confined and observable ensonified area combined with the fact that harbor porpoises are generally considered more likely than some other species to avoid louder areas of higher activity, takes by Level A harassment has not been authorized.

California Sea Lion

California sea lions are infrequent visitors to Bellingham Bay. It is expected that the occasional presence of California sea lions will occur during the fall and winter following forage (fish runs) into the bay. Based on anecdotal evidence from port staff sightings, the applicants estimated that one California sea lion per day may enter the Level B harassment zone during vibratory pile driving and removal. The total number of takes by Level B harassment will be 87 California sea lions.

The largest Level A harassment zone for otariid pinnipeds extends 14 m from the source (Table 7). The Port of Bellingham is planning to implement larger shutdown zones than the Level A harassment zones during all pile installation and removal activities (see Mitigation section), which is expected to eliminate the potential for take by Level A harassment of California sea lions. Therefore, no takes of California sea lions by Level A harassment were requested or are authorized.

Steller Sea Lions

Steller sea lions from the eastern DPS, are also rare visitors to Bellingham Bay that typically occur during the fall and winter following prey into the bay. Based on anecdotal evidence from port staff sightings, the applicants estimated that one Steller sea lion per day may enter the Level B harassment zone during vibratory pile driving and removal. The total number of takes by Level B harassment will be 87 Steller sea lions.

Similar to California sea lions, the largest Level A harassment zone for otariid pinnipeds extends 14 m from the source (Table 7). The Port of Bellingham is planning to implement larger shutdown zones than the Level A harassment zones during all pile installation and removal activities (see Mitigation section), which is expected to eliminate the potential for take by Level A harassment of Steller sea lions. Therefore, no takes of Steller sea lions by Level A harassment were requested or are authorized.

Harbor Seal

The applicant originally estimated that up to 15 harbor seals per day could be taken by Level A harassment during impact driving and 20 harbor seals per day could be taken by Level B harassment during vibratory pile driving and removal. The applicant expected to take 275 harbor seals by Level A harassment and 2,000 seals by Level B harassment.

After further analysis of the survey data provided by the applicant the NMFS recommended a daily rate of 7.7 harbor seals per day in the project area per haulout. The Level B harassment zone encompasses three haulouts and it is expected that roughly the same amount of seals haulout at each location per day. It is expected that up to 23 harbor seals per day could be present in the Level B harassment zone during vibratory pile driving and removal. Therefore, NMFS expects that 2,029 harbor seal takes by Level B harassment over the course of constructions.

The largest Level A harassment zone for phocid pinnipeds extends 193 m from the source (Table 7). The Port of Bellingham expressed concern with the ability to complete work in an efficient manner with the common occurence of harbor seals in the project area. The applicant and NMFS agreed on the implementation of a 50 m shutdown zone in order to shutdown for those animals closest to the pile driving activity but allow for pile driving to continue for animals that may beyond 50 m (see Mitigation section). It is expected that 7.7 harbor seals per day may be subject to Level A harassment during 17 days of impact pile driving for a total of 264 takes by Level A harassment.

TABLE 7—ESTIMATED TAKE BY LEVEL A AND LEVEL B HARASSMENT, BY SPECIES AND STOCK

Common name	Stock	Stock abundance [a]	Level A	Level B	Total take	Take as percentage of stock
Harbor porpoise	Washington Inland Waters	11,233	0	261	261	2.3
Steller sea lion	Eastern U.S	43,201	0	87	87	.2
California sea lion	U.S	257,606	0	87	87	<0.1
Harbor seal	Lynn Canal/Stephens Passage	[b] 7,513	264	2,029	3,050	30.5

[a] Stock or DPS size is Nbest according to NMFS 2022 Final Stock Assessment Reports.
[b] Stock abundance estimate derived from Jefferson et al. 2021.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations.

The following measures will apply to the Port of Bellingham's mitigation requirements:

Implementation of Shutdown Zones for Level A Harassment—For all pile driving/removal activities, the Port of Bellingham will implement shutdowns within designated zones. The purpose of a shutdown zone is generally to define an area within which shutdown of activity will occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Implementation of shutdowns will be used to avoid or minimize incidental Level A harassment exposures from vibratory and impact pile driving for all four species for which take may occur (see Table 7). Shutdown zones for impact and vibratory pile driving activities are based on the Level A harassment zones for the 24-in steel piles, strikes (impact) or duration (vibratory) per day, and marine mammal hearing group (Table 8). The shutdown zone for harbor seals during impact pile driving is less that the Level A harassment zone in order to facilitate efficient work operations during the project. The placement of PSOs during all pile driving activities (described in detail in the Monitoring and Reporting Section) will ensure the full extent of shutdown zones are visible to PSOs.

TABLE 8—SHUTDOWN ZONES DURING PILE INSTALLATION AND REMOVAL

Activity	Shutdown zones (m)		
	HF cetaceans	Phocids	Otariids
Vibratory installation (90 minutes)	30	20	10
Vibratory removal (30 minutes)	20	10	10
Impact installation (1,725 strikes)	430	50	20

Establishment of Monitoring Zones—The Port of Bellingham has identified monitoring zones that will be in effect for all pile driving activities. Vibratory installation and removal is expected to occur on all day of construction and the zone for 24-in steel piles will be implemented at all times (Table 9) Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cease of activity should the animal enter the shutdown zone. PSOs will monitor the entire visible area to maintain the best sense of where animals are moving relative to the zone boundaries defined in Tables 8 and 9. Placement of PSOs on the on the Port of Bellingham facility or in a small boat in the Bellingham Bay will allow PSOs to observe marine mammals within and near the bay.

TABLE 9—MARINE MAMMAL MONITORING ZONE

Activity	Monitoring zone (m)
24-in vibratory installation and removal	11,660

Soft Start—The use of soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to provide an initial set of strikes from the hammer at reduced energy, with each strike followed by a 30-second waiting period. This procedure will be conducted a total of three times before impact pile driving begins. Soft start will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer. Soft start is not required during vibratory pile driving and removal activities.

Pre-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. If the monitoring zone has been observed for 30 minutes and marine mammals are not present within the zone, soft-start procedures can commence and work can continue. When a marine mammal permitted for take by Level B harassment is present in the Level B harassment zone, activities may begin. No work may begin unless the entire shutdown zone is visible to the PSOs. If work ceases for more than 30 minutes, the pre-activity monitoring of both the monitoring zone and shutdown zone will commence.

Bubble Curtin—A bubble curtain will be employed during impact installation or proofing of steel piles. A noise attenuation device will not be required during vibratory pile driving. If a bubble curtain or similar measure is used, it will distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column. Any other attenuation measure will be required to provide 100 percent coverage in the water column for the full depth of the pile. The lowest bubble ring will be in contact with the mudline for the full circumference of the ring. The weights attached to the bottom ring will ensure 100 percent mudline contact. No parts of the ring or other objects will prevent full mudline contact.

Based on our evaluation of the applicant's measures, NMFS has preliminarily determined that the mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Visual Monitoring

Monitoring shall be conducted by NMFS-approved observers in accordance with section 13.2 of the application. Trained observers shall be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. Observer training must be provided prior to project start, and shall include instruction on species identification (sufficient to distinguish the species in the project area), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).

Monitoring will be conducted 30 minutes before, during, and 30 minutes after pile driving/removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving/removal activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

A minimum of one PSO will be on duty during impact pile driving activities and a minimum of two PSOs during vibratory installation/removal. Locations from which PSOs will be able to monitor for marine mammals are readily available from the Port of Bellingham property and, if necessary, on small boats in Bellingham Bay. PSOs will monitor for marine mammals entering the Level B harassment zones; the position(s) may vary based on construction activity and location of piles or equipment.

PSOs will scan the waters using binoculars and will use a handheld range-finder device to verify the distance to each sighting from the project site. All PSOs will be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator via a radio. The Port of Bellingham will adhere to the following observer qualifications:

(i) Independent observers (*i.e.,* not construction personnel) are required;

(ii) One PSO will be designated as the lead PSO or monitoring coordinator and that observer must have prior experience working as an observer;

(iii) Other observers may substitute education (degree in biological science or related field) or training for experience; and

(iv) The applicant must submit observer Curriculum Vitaes for approval by NMFS.

Additional standard observer qualifications include:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities. It will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring.
- Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.,* impact driving) and the total equipment duration for cutting for each pile or total number of strikes for each pile (impact driving).
- PSO locations during marine mammal monitoring.
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.
- Upon observation of a marine mammal, the following information: Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; Time of sighting; Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species; Distance and bearing of each marine mammal observed relative to the pile being driven for each sighting (if pile driving was occurring at time of sighting); Estimated number of animals (min/max/best estimate); Estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*); Animal's closest point of approach and estimated time spent within the harassment zone; Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching).
- Number of marine mammals detected within the harassment zones, by species.
- Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality, the Port of Bellingham will immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator. The report will include the following information:

- Description of the incident;
- Environmental conditions (*e.g.,* Beaufort sea state, visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities will not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with the Port of Bellingham to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Port of Bellingham will not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that the Port of Bellingham discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition as described in the next paragraph), the Port of Bellingham will immediately report the incident to the Office of Protected Resources (*PR.ITP.MonitoringReports@noaa.gov*), NMFS and to the West Coast Region regional stranding coordinator as soon as feasible. The report will include the same information identified in the paragraph above. Activities will be able to continue while NMFS reviews the circumstances of the incident. NMFS will work with the Port of Bellingham to determine whether modifications in the activities are appropriate.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 4033; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analysis applies to all the species listed in Table 7, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

Pile driving and removal activities associated with the project as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level A harassment and Level B harassment from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals of these species are present in zones ensonified above the thresholds for Level A or Level B harassment identified above when these activities are underway.

Take by Level A and Level B harassment will be due to potential behavioral disturbance, TTS, and PTS. No serious injury or mortality is anticipated or for authorization given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. Take by Level A harassment is only anticipated for harbor seal. The potential for harassment is minimized through the construction method and the implementation of the planned mitigation measures (see Mitigation section).

Based on reports in the literature as well as monitoring from other similar activities, behavioral disturbance (*i.e.,* Level B harassment) would likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006; HDR, Inc., 2012; Lerma, 2014; ABR, 2016). Most likely for pile driving, individuals would simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in Washington, which have taken place with no observed severe responses of any individuals or known long-term adverse consequences. Level B harassment would be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring. While vibratory driving associated with the project may produce sound at distances of many kilometers from the project site, thus overlapping with some likely less-disturbed habitat, the project site itself is located in a busy harbor and the majority of sound fields produced by the specified activities are close to the harbor. Animals disturbed by project sound would be expected to avoid the area and use nearby higher-quality habitats.

In addition to the expected effects resulting from authorized Level B harassment, we anticipate that harbor seals may sustain some limited Level A harassment in the form of auditory injury. However, animals in these locations that experience PTS would likely only receive slight PTS, *i.e.,* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by pile driving, *i.e.,* the low-frequency region below 2 kilohertz (kHz), not severe hearing impairment or impairment in the regions of greatest hearing sensitivity. If hearing impairment occurs, it is most likely that the affected animal would lose a few decibels in its hearing sensitivity, which in most cases is not likely to meaningfully affect its ability to forage and communicate with conspecifics. As described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice through use of soft start.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat. The project activities will not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish or invertebrates to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities, the relatively small area of the habitat that may be affected, and the availability of nearby habitat of similar or higher value, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- Any Level A harassment exposures (*i.e.,* to harbor seals, only) are anticipated to result in slight PTS (*i.e.,* of a few decibels), within the lower frequencies associated with pile driving;
- The anticipated incidents of Level B harassment will consist of, at worst, temporary modifications in behavior that will not result in fitness impacts to individuals;
- The ensonifed areas from the project is very small relative to the overall habitat ranges of all species and stocks;
- or any other areas of known biological importance; with the exception of three haulout locations in Bellingham Bay that will be affected by the project. Currently those haulout locations are not known to be pupping locations for harbor seals but are important areas throughout the year. Harbor seals at these haulouts will likely result in repeated exposure of the same animals. Repeated exposures of individuals to this pile driving activity could cause Level A and Level B harassment but are unlikely to considerably disrupt foraging behavior or result in significant decrease in fitness, reproduction, or survival for the affected individuals. In all, there will be no adverse impacts to the stock as a whole.
- The mitigation measures are expected to reduce the effects of the specified activity to the level of least practicable adverse impact.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 7 demonstrates the number of instances in which individuals of a given species could be exposed to receive noise levels that could cause Level A and Level B harassment for the work in Bellingham Bay. Our analysis shows that less than 3 percent of all but one stock could be taken by harassment, and less than 30 percent of harbor seals, noting that the percentage of individual harbor seals is likely notably lower because some portion of the estimated instances of take are expected to represent repeated takes of the same individuals on multiple days. The numbers of animals to be taken for these stocks will be considered small relative to the relevant stock's abundances, even if each estimated taking occurred to a new individual—an extremely unlikely scenario.

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the final IHA qualifies to be categorically excluded from further NEPA review.

Authorization

NMFS has issued an IHA to the Port of Bellingham for the potential harassment of small numbers of three marine mammal species incidental to the maintenance and rehabilitation of the Bellingham Shipping Terminal project in Bellingham, WA, that includes the previously explained mitigation, monitoring and reporting requirements.

Dated: November 7, 2023.

Shannon Bettridge,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–24977 Filed 11–13–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD502]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to U.S. Coast Guard Construction in Astoria, Oregon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an Incidental Harassment Authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the United States Coast Guard (USCG) to incidentally harass marine mammals during pile driving activities associated with East Tongue Point (ETP) construction project in Astoria, Oregon.

DATES: The Authorization is effective from November 6, 2023 through November 5, 2024.

ADDRESSES: Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-united-states-coast-guards-construction-astoria-oregon.* In case of problems accessing these documents, please call the contact listed above.

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On April 22, 2022, NMFS received a request from the USCG for an IHA to take marine mammals incidental to pile driving activity associated with the ETP construction in Astoria, Oregon. Following NMFS' review of the application, we received a revised version of the application on June 27, 2022. After finalizing construction details, the USCG submitted another revised version on May 26, 2023, followed by a final revised version on July 24, 2023, which was deemed adequate and complete on August 1, 2023. The proposed IHA was published for public comment on September 27, 2023. USCG's request is for take of harbor seal, California sea lion, Steller sea lion and harbor porpoise by Level B harassment and, for harbor seal and harbor porpoise, Level A harassment. Neither USCG nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. There are no changes from the proposed IHA to the final IHA.

Description of Activity

Overview

The USCG requested an IHA to homeport multiple new Fast Response Cutters (FRC) to support USCG District 13 at ETP in Astoria, OR. This three-phased project entails both onshore and in-water construction activities to remove old piles, construct and improve facilities necessary for the long-term support of the FRC's and USCG mission. Phase 1 includes pile removal and demolition, dredging and shoreline rock improvements, phase 2 includes all pile driving and in water construction, and phase 3 includes all overwater and upland construction.

The purpose of the project is to improve and construct waterside and landslide facilities that will meet homeporting requirements of the FRCs. This includes the availability of logistics and support amenities for personnel, the ability of the new FRC docks/floats to accommodate the FRCs with all necessary operations on the boat while it is stationary at the dock, and the ability of the facility to provide for a long-term USCG presence for the economic life of its assets. Facilities at ETP are aged, outdated, and will require improvements to meet homeporting requirements.

Of the stages of this project, the only part that may result in Level A and Level B harassment, and further analyzed in this notice is the in-water construction activities associated with impact pile driving (Phase 2). The USCG proposes installation of 30-inch (in) and 36-in steel pipe piles for their new facilities with an estimated 52 total days of impact pile driving. Pile driving will only occur within the Oregon Department of Fish and Wildlife (ODFW) approved in-water working window, however the proposed IHA will have a 1-year period of effectiveness

A detailed description of the planned construction project is provided in the **Federal Register** notice for the proposed IHA (88 FR 66393, September 27, 2023). Since that time, no changes have been made to the planned construction activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to USCG was published in the **Federal Register** on September 17, 2023 (88 FR 66393). That notice described, in detail, USCG's activities, the marine mammal species that may be affected by the activities, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments. This proposed notice was available for a 30-day public comment period. NMFS received no public comments.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species).*

Table 1 lists all species or stocks for which take is expected and authorized for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Pacific and Alaska SARs. All values presented in table 1 are the most recent available at the time of publication and are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 1—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Phocoenidae (porpoises):						
Harbor Porpoise	*Phocoena phocoena*	Northern Oregon/Washington Coast.	-,-,N	21,487 (0.44, 15,123, 2011).	151	≥3.0
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California Sea Lion	*Zalophus californianus*	US	-,-,N	257,606 (N/A, 233,515, 2014).	14,011	>321
Steller Sea Lion	*Eumetopias jubatus*	Eastern	-,-,N	43,201 (N/A, 43,201, 2017)	2,592	112

TABLE 1—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES—Continued

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Family Phocidae (earless seals):						
Harbor Seal	*Phoca vitulina*	Oregon/Washington Coast	-,-,N	UNK	UND	10.6

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports/.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

As indicated above, all four species in table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. While killer whales (*Orcinus orca*), humpback whales (*Megaptera novaeangliae*), and gray whales (*Eschrichtius robustus*) have been sighted off the Oregon coast, the USCG's project is located 23 kilometers (km) into the mouth of the Columbia River. Therefor the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here and in the USCG's application.

A detailed description of the species likely to be affected by the USCG's construction project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (88 FR 66393, September 27, 2023). Since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from USCG's construction activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the project area. The notice of proposed IHA (88 FR 66393, September 27, 2023) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from the USCG's pile driving activities on marine mammals and their habitat. That information and analysis is incorporated by reference into this notice and is not repeated here; please refer to the notice of the proposed IHA (88 FR 66393, September 27, 2023).

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes authorized through the IHA, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic source (*i.e.,* impact pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result. The mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable. As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur permanent threshold shift (PTS) of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

USCG's planned activity includes the use of impulsive (impact pile driving) sources, and therefore the RMS SPL threshold of 160 dB re 1 μPa is applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). USCG's planned activity includes the use of impulsive (impact pile driving) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT—Continued

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1µPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Underwater sound propagation modeling was completed by USCG using dBSea, a software developed by Marshall Day Acoustics for the modeling of underwater sound propagation in a variety of environments. The model was built by importing bathymetry data and placing noise sources in the environment. Each source can consist of equipment chosen from either the standard or the user-defined databases. Noise mitigation methods may also be included. The user has control over the seabed and water properties including sound speed profile, temperature, salinity, and current. Noise levels were calculated to the extent of the bathymetry area. To examine results in more detail, levels may be plotted in cross sections, or a detailed spectrum may be extracted at any point in the calculation area. Levels were calculated in third octave bands from 12.5 (hertz) Hz to 20 kHz. Please refer to Acoustic Assessment included in USCG's application for additional details on the modeling principles and assumptions.

The representative acoustic modeling scenarios were derived from descriptions of the expected construction activities through consultations between the USCG project design and engineering teams. The scenarios modeled were ones where potential underwater noise impacts of marine species were anticipated and included impact pile driving associated with pier installation. All modeling scenarios occur at a representative location. This location was selected so that the effects of sound propagation at the range of water column depths occurring within the project area could be evaluated.

The USCG opted to perform their own acoustic modeling for the Level A and Level B harassment isopleths as they had site specific information to input into the model, which may assist in providing more accurate results than, for example, use of NMFS' User Spreadsheet tool, which is a relatively simple tool that cannot incorporate site-specific environmental information. The modeling used by USCG takes into account bathymetry, geo-acoustic properties of sub-bottom sediments, and sound speed profile. NMFS has reviewed USCG's modeling and determined that it is acceptable for use here.

A summary of construction and operational scenarios included in the underwater acoustic modeling analysis is provided in the Acoustic Assessment and summarized in table 5 below. The pile diameters selected for the impact pile driving modeling scenarios were based on maximum project design considerations approximated by USCG. The Level A and Level B harassment isopleths for the planned activities are shown in table 4 and 5.

TABLE 4—SOURCE LEVELS FOR IMPACT PILE INSTALLATION

Pile size	Peak SPLs (dB)	RMS SPLs (dB)	SELss (dB)	Source
36-in pile	208	190	180	Caltrans 2020.
30-in pile	210	190	177	Caltrans 2020.

TABLE 5—LEVEL A AND LEVEL B HARASSMENT ISOPLETHS FOR IMPACT PILE DRIVING

Activity	Level A harassment zones (m)			Level B harassment zone (m)
	HF cetaceans	Phocid pinnipeds	Otariid pinnipeds	
36-in pile	287	197	0	602
30-in pile	213	130	0	602

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations and describe how the information provided is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and authorized. The USCG used marine mammal species densities from the Pacific Navy Marine Species Density Database to estimate take for marine mammals. This database incorporates analyzed literature and research for marine mammal density estimates per season for regions throughout the U.S. and the USCG based their take estimates on regionally available population density estimates and site-specific knowledge. Although this database provides densities for all species present in the action area, the densities are based on offshore abundance and not directly relevant to occurrence within in the Columbia River. Following careful review of the analysis presented by the USCG in its application, including marine mammal occurrence data, NMFS has determined that different information inputs than those selected by the USCG represent the best available scientific information for marine mammal abundance in the action area. These selections are discussed in greater detail below.

Steller Sea Lion, California Sea Lion and Harbor Seal

For Steller sea lions, California sea lions, and harbor seals, the numbers of individuals were referenced from Washington Department of Fish and Wildlife's (WDFW) surveys from 2000–2014 at the South Jetty for the months of in water work (November through February) and averaged to get an estimated daily count (table 6). While animals were surveyed at the prominent haul out site along the South Jetty, since the ETP site is close to the mouth of the river and the South Jetty, we assumed each of these estimates represents a good proxy for the total number of individuals that could be present in the project vicinity. We derived potential take estimates from the average abundance recorded over the specified period.

TABLE 6—PINNIPED COUNTS FROM THE SOUTH JETTY FROM 2000–2014

[WDFW 2014]

	Steller sea lion (monthly)	Steller sea lion (daily)	California sea lion (monthly)	California sea lion (daily)	Harbor seal (monthly)	Harbor seal (daily)
November	1663	55	1214	40	0	0
December	1112	36	725	23	57	2
January	249	8	10	0.3	0	0
February	259	9	28	1	1	0.04
Average (all months)	821	27	494	16	15	0.5

To calculate the total estimated takes, we multiplied the estimated days of activity by the associated average daily pinniped counts (monthly count/days of the month and averaged across all months) for each species (table 7).

TABLE 7—ESTIMATED TAKE OF STELLER SEA LIONS, CALIFORNIA SEA LIONS, AND HARBOR SEALS

Pile type and method	Days of activity	Steller sea lion average count	Steller sea lion calculated take	California sea lion average count	California sea lion calculated take	Harbor seal average count	Harbor seal calculate take
36-in Steel Pile Impact Installation 30-in Steel Pile Impact Installation	52	27	1,404	16	832	0.5	26

There is some potential for take by Level A harassment of harbor seals due to the largest zone being approximately 200 m and because of the cryptic nature and assumed lower detectability of harbor seals at this distance. Based on the relative proportion of the area expected to be ensonified above the Level A harassment threshold for phocid pinnipeds from impact pile driving (approximately 0.36 square kilometers (km^2)) to the area ensonified above the Level B harassment threshold (1.1 km^2 for impact pile driving), we estimated that of the total number of harbor seals that may be located within the greater Level B harassment zone, approximately 33 percent would approach the pile driving activities closer and enter the smaller Level A harassment zone (197 m). Thus, we assume that 33 percent of the total estimated takes of harbor seals (26 individuals; see table 7) would be by Level A harassment. Therefore, we are proposing to authorize 9 takes of harbor seals by Level A harassment and 17 takes by Level B harassment (table 8).

The Level A harassment zone for otariid pinnipeds is 0 m. The USCG would be required to enforce a minimum shutdown zone of 10 m for these species. At that close range, the USCG would be able to detect California sea lions and Steller sea lions and implement the required shutdown measures before any sea lions could enter the Level A harassment zone. Therefore, no takes of California sea lions or Steller sea lions by Level A harassment are requested or authorized.

Harbor Porpoise

Harbor porpoises are regularly observed in the coastal waters near the mouth of the Columbia River and are known to occur year-round, although this project occurs farther upstream in the Columbia River. Their nearshore abundance peaks with anchovy presence, which is generally June through October. However, there was one recorded sighting of a harbor porpoise in the project area east of the jetties in the September-November timeframe (OBIS–SEAMAP 2019). During monitoring for pile driving at the Columbia River Jetty System which is at the mouth of the Columbia River approximately 23 km from the USCG's planned action area, over the course of a 5 day monitoring period, observers detected five harbor porpoises (Grette Associates 2016). Additionally we reviewed monitoring reports from four recent projects in the nearby area (Army Corps of Engineers King Pile Markers and Sand Island Pile Dike Test Piles, and Phase 1 and 2 of the City of Astoria Bridge Replacement which can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities#active-authorizations*). Only one project with activities occurring over 15 days had eight sightings of harbor porpoise at Sand Island Dike.

Given that, there is some potential for harbor porpoise to be present near the project area, and based on the previously mentioned monitoring reports sighting data, we calculated that harbor porpoise could enter the Level B harassment zone every other day of pile driving (or 0.5/day). To calculate the total estimated takes by Level B harassment, we multiplied the estimated days of activity by the associated daily harbor porpoise rate (table 8).

There is also some potential for take by Level A harassment of harbor porpoise due to the largest zone being approximately 300 m and because of the cryptic nature and assumed lower detectability of harbor porpoise at this distance. The USCG anticipates that 12 harbor porpoises during impact driving could be taken by Level A harassment. Take by Level A harassment for harbor porpoise was calculated in the same way it was for harbor seals. In total, we are proposing to authorize take of 26 harbor porpoises (table 8).

TABLE 8—TAKE OF MARINE MAMMALS BY LEVEL A AND LEVEL B HARASSMENT BY SPECIES, STOCK AND PERCENT OF TAKE BY STOCK

Species	Stock	Take by Level A harassment	Take by Level B harassment	Total authorized take	Stock abundance	Percent of stock
Harbor Porpoise	Northern Oregon/Washington Coast.	12	14	26	21,487	0.1
California sea lion	U.S	0	832	832	257,606	0.3
Steller sea lion	Eastern	0	1,404	1,404	43,201	3.2
Harbor seal	Oregon/Washington Coast	9	17	26	24,732	0.1

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

Time Restrictions

The USCG has proposed in its description of the project that pile driving would occur only during daylight hours (no sooner than 30 minutes after sunrise through no later than 30 minutes before sunset), when visual monitoring of marine mammals can be conducted. In addition, ODFW requires all in-water construction be limited to the months of November through February to minimize impacts to ESA listed fish species.

Mitigation Measures

USCG must follow mitigation measures as specified below:

- Ensure that construction supervisors and crews, the monitoring team, and relevant USCG staff are trained prior to the start of all pile driving activity, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work;
- Employ Protected Species Observers (PSOs) and establish monitoring locations as described in the application and the IHA. USCG must monitor the project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions. For all pile driving, at least one PSO must be used. The PSO will be stationed as close to the activity as possible;
- The placement of the PSOs during all pile driving activity will ensure that the entire shutdown zone, see table 9, is visible during pile driving activities. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone will not be visible (*e.g.,* fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected;
- Monitoring must take place from 30 minutes prior to initiation of pile driving activity (*i.e.,* pre-clearance monitoring) through 30 minutes post-completion of pile driving activity;
- Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones indicated in table 9 are clear of marine mammals. Pile driving may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals;
- USCG must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30 second waiting period, then two subsequent reduced-energy strike sets. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer; and
- If a marine mammal is observed entering or within the shutdown zones indicated in table 9, pile driving must

be delayed or halted. If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone (table 9) or 15 minutes have passed without re-detection of the animal.

Shutdown Zones

USCG will establish shutdown zones for all pile driving activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones would be based upon the Level A harassment zone for each pile size/type where applicable, as shown in table 9.

For in-water heavy machinery activities other than pile driving, if a marine mammal comes within 10 m, work will stop and vessels will reduce speed to the minimum level required to maintain steerage and safe working conditions. A 10 m shutdown zone would also serve to protect marine mammals from physical interactions with project vessels during pile driving and other construction activities, such as barge positioning or drilling. If an activity is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone indicated in table 9 or 15 minutes have passed without re-detection of the animal. Construction activities must be halted upon observation of a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met entering or within the harassment zone.

All marine mammals will be monitored in the Level B harassment zones and throughout the area as far as visual monitoring can take place. If a marine mammal enters the Level B harassment zone, in-water activities will continue and the animal's presence within the estimated harassment zone will be documented.

USCG will also establish shutdown zones for all marine mammals for which take has not been authorized or for which incidental take has been authorized but the authorized number of takes has been met. These zones are equivalent to the Level B harassment zones for each activity. If a marine mammal species not covered under this IHA enters the shutdown zone, all in-water activities will cease until the animal leaves the zone or has not been observed for at least 15 minutes, and NMFS will be notified about species and precautions taken. Pile driving will proceed if the non-IHA species is observed to leave the Level B harassment zone or if 15 minutes have passed since the last observation.

If shutdown and/or clearance procedures would result in an imminent safety concern, as determined by USCG or its designated officials, the in-water activity will be allowed to continue until the safety concern has been addressed, and the animal will be continuously monitored.

TABLE 9—SHUTDOWN ZONES AND MONITORING ZONES

Activity	Minimum shutdown zone (m)			Harassment zone (m)
	HF cetaceans	Phocid	Otariid	
36-in Impact Installation	300	50	10	610
30-in Impact Installation	220	50	10	610

Protected Species Observers

The placement of PSOs during all construction activities (described in the Monitoring and Reporting section) will ensure that the entire shutdown zone is visible. Should environmental conditions deteriorate such that the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile driving would be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

PSOs will monitor the full shutdown zones and the Level B harassment zones to the extent practicable. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project areas outside the shutdown zones and thus prepare for a potential cessation of activity should the animal enter the shutdown zone.

Based on our evaluation of USCG's planned measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

• How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
• Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring must be conducted in accordance with the conditions in this section and the IHA. Marine mammal monitoring during pile driving activities will be conducted by PSOs meeting the following requirements:
• PSOs must be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods;
• At least one PSO will have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
• Other PSOs may substitute education (degree in biological science or related field) or training for experience; and
• Where a team of three or more PSOs is required, a lead observer or monitoring coordinator will be designated. The lead observer will be required to have prior experience working as a marine mammal observer during construction.

PSOs must have the following additional qualifications:
• Ability to conduct field observations and collect data according to assigned protocols;
• Experience or training in the field identification of marine mammals, including the identification of behaviors;
• Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
• Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.
• USCG must employ three PSOs during all pile driving activities depending on the size of the monitoring and shutdown zones. A minimum of one PSO must be assigned to monitor waters surrounding the active pile driving location.
• USCG must establish the following monitoring locations with the best views of monitoring zones as described below, in the IHA, and USCG's application.
• PSOs would be deployed in strategic locations around the harassment zone at all times during in-water pile driving. PSOs will be positioned at locations that provide full views of the impact hammering monitoring zones and the shutdown zones. PSOs will be stationed on the staging barges, on shore at the project site, and at the entrance to the commercial dock area at ETP. All PSOs will have access to high-quality binoculars, range finders to monitor distances, and a compass to record bearing to animals as well as radios or cells phones for maintaining contact with work crews.

Monitoring will be conducted 30 minutes before, during, and 30 minutes after all in water construction activities. In addition, PSOs will record all incidents of marine mammal occurrence, regardless of distance from activity, and will document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

USCG shall conduct briefings between construction supervisors and crews, PSOs, USCG staff prior to the start of all pile driving activities and when new personnel join the work. These briefings will explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities, or 60 days prior to a requested date of issuance from any future IHAs for projects at the same location, whichever comes first. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:
• Dates and times (begin and end) of all marine mammal monitoring;
• Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.,* impact) and the total number of strikes for each pile;
• PSO locations during marine mammal monitoring;
• Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;

Upon observation of a marine mammal, the following information:
• Name of PSO who sighted the animal(s) and PSO location and activity at the time of sighting;
• Time of sighting;
• Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentifiable), PSO confidence in identification, and the composition of the group if there is a mix of species;
• Distance and bearing of each marine mammal observed relative to the pile being driven for each sightings (if pile driving was occurring at time of sighting);
• Estimated number of animals (min/max/best estimate);
• Estimated number of animals by cohort (adults, juveniles, neonates, group composition, sex class, *etc.*);
• Animal's closest point of approach and estimated time spent within the harassment zone;
• Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);
• Number of marine mammals detected within the harassment zones and shutdown zones; by species;
• Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensured, and resulting changes in behavior of the animal(s), if any; and

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the USCG must immediately cease the specified activities and report the incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*), NMFS and to the West Coast Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, USCG must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The USCG must not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ‘‘taken’’ through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all species listed in table 1 for which take could occur, given that NMFS expects the anticipated effects of the planned pile driving on different marine mammal stocks to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis.

Pile driving activities associated with the USCG construction project have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level A and Level B harassment, from underwater sounds generated from pile driving. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

No serious injury or mortality would be expected, even in the absence of required mitigation measures, given the nature of the activities. Further, limited take by Level A harassment is authorized for two species, but the potential for harassment would be minimized through the construction method and the implementation of the planned mitigation measures (see Mitigation section).

Take by Level A harassment is authorized for harbor seals and harbor porpoise to account for the possibility that an animal could enter a Level A harassment zone prior to detection, and remain within that zone for a duration long enough to incur PTS before being observed and the USCG shutting down pile driving activity. Any take by Level A harassment is expected to arise from, at most, a small degree of PTS, *i.e.,* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by impact pile driving (*i.e.* the low-frequency region below 2 kHz), not severe hearing impairment or impairment within the ranges of greatest hearing sensitivity. Animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS.

Further, the amount of authorized take by Level A harassment is very low for both marine mammal species. If hearing impairment occurs, it is most likely that the affected animal would lose only a few decibels in its hearing sensitivity. Due to the small degree anticipated, any PTS potential incurred would not be expected to affect the reproductive success or survival of any individuals, much less result in adverse impacts on the species or stock.

Additionally, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. However, since the hearing sensitivity of individuals that incur TTS is expected to recover completely within minutes to hours, it is unlikely that the brief hearing impairment would affect the individual's long-term ability to forage and communicate with conspecifics, and would therefore not likely impact reproduction or survival of any individual marine mammal, let alone adversely affect rates of recruitment or survival of the species or stock.

The Level A harassment zones identified in table 5 are based upon an animal's exposure to pile driving of up to three steel piles per day. Given the short duration to impact drive each pile and break between pile installations (to reset equipment and move piles into place), an animal would have to remain within the area estimated to be ensonified above the Level A harassment threshold for multiple hours. This is highly unlikely given marine mammal movement in the area. If an animal was exposed to accumulated sound energy, the resulting PTS would likely be small (*e.g.,* PTS onset) at lower frequencies where pile driving energy is concentrated, and unlikely to result in impacts to individual fitness, reproduction, or survival.

The nature of the pile driving project precludes the likelihood of serious injury or mortality. For all species and stocks, take would occur within a limited, confined area (adjacent to the project site) of the stock's range. Level A and Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further, the amount of take authorized is small when compared to stock abundance.

Behavioral responses of marine mammals to pile driving in the Columbia River are expected to be mild, short term, and temporary. Marine mammals within the Level B harassment zones may not show any visual cues they are disturbed by activities or they could become alert, avoid the area, leave the area, or display other mild responses that are not observable, such as changes in vocalization patterns. Given that pile driving would occur for only a portion of the project's duration, any harassment occurring would be temporary. Additionally, many of the species present in region would only be present temporarily based on seasonal patterns or during transit between other habitats. These temporarily present species would be exposed to even smaller periods of noise-generating activity, further decreasing the impacts.

For all species, there are no known BIA near the project area that would be impacted by USCG's planned activities. While California sea lions and harbor seals are the species most likely to occur within the immediate project area the nearest haul out for both species is approximately 3 miles (4.8 km) away. There are three known haul out sites for both species near the project area including Tongue Point Sands, Taylor Sands, and Green Island/Sanborn Slough, the closest being Tongue Point Sands 3 miles (4.8 km) from the project area. Additionally, there is a Steller sea lion haul out in the Columbia River; it is approximately 15 miles (24.1 km) away from the project site at the south jetty off the western shoreline of Fort Stevens State Park. None of these haul outs are in the immediate project vicinity.

In addition, it is unlikely that minor noise effects in a small, localized area of habitat would have any effect on each stock's continued survival. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- Authorized Level A harassment would be very small amounts and of low degree;
- For all species, the mouth of the Columbia River is a very small and peripheral part of their range;
- The intensity of anticipated takes by Level B harassment is relatively low for all stocks. Level B harassment would be primarily in the form of behavioral disturbance, resulting in avoidance of the project areas around where impact pile driving is occurring, with some low-level TTS that may limit the detection of acoustic cues for relatively brief amounts of time in relatively confined footprints of the activities;
- Effects on species that serve as prey for marine mammals from the activities are expected to be short-term and, therefore, any associated impacts on marine mammal feeding are not expected to result in significant or long-term consequences for individuals, or to accrue to adverse impacts on their populations;
- The ensonified areas are very small relative to the overall habitat ranges of all species and stocks;
- The lack of anticipated significant or long-term negative effects to marine mammal habitat; and
- USCG would implement mitigation measures including soft starts and shutdown zones to minimize the numbers of marine mammals exposed to injurious levels of sound, and to ensure that take by Level A harassment is, at most, a small degree of PTS.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned activities will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities. For all species, the authorized take is below one third of the population for all marine mammal stocks (Table 8).

Based on the analysis contained herein of the planned activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Authorization

As a result of these determinations, NMFS issued an IHA to USCG for conducting impact pile driving associated with the ETP project in Astoria, Oregon, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The final IHA can be found at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-united-states-coast-guards-construction-astoria-oregon.*

Dated: November 7, 2023.

Shannon Bettridge,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–24980 Filed 11–13–23; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, November 15, 2023—10:00 a.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, MD.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED:

Decisional Matter

Infant Support Cushions Notice of Proposed Rulemaking—Briefing.

A live webcast of the meeting can be viewed at the following link:*https://cpsc.webex.com/cpsc/j.php?MTID=mbcafc15afe58d6ab3a943232e901ce9f.*

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, 301–504–7479 (Office) or 240–863–8938 (Cell).

Dated: November 8, 2023.

Sarah Bock,

Paralegal Specialist.

[FR Doc. 2023–25098 Filed 11–8–23; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Grant Exclusive Patent License to Veloxint CIF, Inc.; Tridelphia, WV

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: The Department of the Army hereby gives notice of its intent to grant to Veloxint CIF, Inc.; a company having its principal place of business at 1142 Middle Creek Road, Tridelphia, WV 26059, an exclusive license.

DATES: Written objections must be filed not later than 15 days following publication of this announcement.

ADDRESSES: Send written objections to U.S. Army Combat Capabilities Development Command Army Research Laboratory, Partnerships Support Office, FCDD–RLB–SS/Jason Craley, Building 4402, 6468 Integrity Ct., Aberdeen Proving Ground, MD 21005–5425 or email to *ORTA@arl.army.mil.*

FOR FURTHER INFORMATION CONTACT: Jason Craley, (410) 306–1275, email: *ORTA@arl.army.mil.*

SUPPLEMENTARY INFORMATION: The Department of the Army plans to grant an exclusive license to Veloxint CIF, Inc. in all fields of use pertaining to the following;

—''Nano-Structured Alloy Material and Method of Synthesizing'', ARL 21–06, US Patent Application No. 17/700,653, Filing Date: 03/22/2022, U.S. Publication No. 2023/0302531A1, Publication Date: 09/28/2023, PCT Application No. PCT/US23/31342, Filing Date: 08/29/2023.

—''Oxidation and Corrosion Resistant Nanostructured Copper-Based Metallic Systems'', ARL 22–18, US Patent Application No. 18/127,398, Filing Date: 03/28/2023, PCT Application No. PCT/US23/32206, Filing Date: 09/07/2023.

The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the U.S. Army Combat Capabilities Development Command Army Research Laboratory receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). Competing applications completed and received by the U.S. Army Combat Capabilities Development Command Army Research Laboratory within fifteen (15) days from the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

James W. Satterwhite Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2023–25063 Filed 11–13–23; 8:45 am]

BILLING CODE 3711–02–P

DEPARTMENT OF EDUCATION

Applications for New Awards; College Assistance Migrant Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2024 for the College Assistance Migrant Program (CAMP), Assistance Listing Number 84.149A. This notice relates to the approved information collection under the Office of Management and Budget (OMB) control number 1894–0006.

DATES:

Applications Available: November 17, 2023.

Deadline for Transmittal of Applications: January 16, 2024.

Deadline for Intergovernmental Review: March 13, 2024.

Pre-Application Webinar Information: The Department will hold a pre-application workshop via webinar for prospective applicants. The date and time of the workshop will be announced on the Department's website at: *https://oese.ed.gov/offices/office-of-migrant-education/college-assistance-migrant-program/applicant-information-college-assistance-migrant-program/.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.* Please note that these Common Instructions supersede the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT: Dylan Hart-Medina, Office of Migrant

Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, Washington, DC 20202. Telephone: (202) 987–1705. Email: *Dylan.Hart-Medina@ed.gov*.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The CAMP is designed to assist migratory or seasonal farmworkers (or immediate family members of such workers) who are enrolled or are admitted for enrollment on a full-time basis at an institution of higher education (IHE) to complete their first academic year.

Priorities: This competition includes one competitive preference priority and one invitational priority. In accordance with 34 CFR 75.105(b)(2)(ii) and (iv), the competitive preference priority is from section 418A(e) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1070d–2(e)) and 34 CFR 206.31.

Competitive Preference Priority: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 15 points to an application for this competitive preference priority, depending on how well the application meets this priority.

This priority is:

Consideration of Prior Experience. (Up to 15 points)

Projects that are expiring (CAMP grantees in their final budget period that received their current CAMP award in FY 2019) will be considered for additional points under this competitive preference priority. In accordance with section 418A(e) of the HEA, the Department will award up to 15 points for this priority. In accordance with 34 CFR 206.31(b), the Secretary will consider the applicant's experience in implementing an expiring CAMP project, with respect to:

(a) Whether the applicant served the number of participants described in its approved application;

(b) The extent to which the applicant met or exceeded its funded objectives with regard to project participants, including the targeted number and percentage of participants who—

(1) Successfully completed the first year of college; and

(2) Continued to be enrolled in postsecondary education after completing their first year of college; and

(c) The extent to which the applicant met administrative requirements, including recordkeeping, reporting, and financial accountability under the terms of the previously funded award.

Invitational Priority: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Meeting Students' Social, Emotional, and Academic Needs.

Projects that are designed to improve students' social, emotional, academic, and career development, with a focus on underserved students, through one or both of the following:

(a) Creating a positive, inclusive, and identity-safe climate at institutions of higher education through fostering a sense of belonging and inclusion for students who are migratory or seasonal farmworkers or immediate family members of such workers.

(b) Fostering partnerships, including across government agencies (*e.g.,* housing, human services, employment agencies), local educational agencies, community-based organizations, adult learning providers, and postsecondary education institutions, to provide comprehensive services to students who are migratory or seasonal farmworkers or immediate family members of such workers and their families that support students' social, emotional, mental health, and academic needs, and that are inclusive with regard to race, ethnicity, culture, language, and disability status.

Definitions: The definitions of ''migrant farmworker'' and ''seasonal farmworker'' are from 34 CFR 206.5. The definitions of ''demonstrates a rationale,'' ''experimental study,'' ''logic model,'' ''project component,'' ''promising evidence,'' ''quasi-experimental design study,'' ''relevant outcome,'' and ''What Works Clearinghouse Handbooks (WWC Handbooks)'' are from 34 CFR 77.1.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbooks:

(i) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(ii) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(iii) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Migrant farmworker means a seasonal farmworker—as defined in this notice—whose employment required travel that precluded the farmworker from returning to his or her domicile (permanent place of residence) within the same day.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Promising evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following:

(i) A practice guide prepared by WWC reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single study assessed by the Department, as appropriate, that—

(A) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (*e.g.,* a study using regression methods to account for differences between a treatment group and a comparison group); and

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbooks.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Seasonal farmworker means a person whose primary employment was in farmwork on a temporary or seasonal basis (that is, not a constant year-round activity) for a period of at least 75 days within the past 24 months.

What Works Clearinghouse Handbooks (WWC Handbooks) means the standards and procedures set forth in the WWC Standards Handbook, Versions 4.0 or 4.1, and WWC Procedures Handbook, Versions 4.0 or 4.1, or in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (all incorporated by reference, see § 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the WWC Handbooks documentation.

Note: The What Works Clearinghouse Procedures and Standards Handbook (Version 4.1), as well as the more recent What Works Clearinghouse Handbooks released in August 2022 (Version 5.0), are available at *https://ies.ed.gov/ncee/wwc/Handbooks.*

Program Authority: 20 U.S.C. 1070d–2.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 206. (e) The Migrant Education Program (MEP) definitions in 34 CFR 200.81. (f) The National Farmworker Jobs Program (NFJP) definitions in 20 CFR 685.110 and eligibility regulations in 20 CFR 685.320.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

Note: The MEP definitions and NFJP definitions and eligibility regulations apply to individuals seeking to qualify for CAMP based on past participation in the MEP or NFJP.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $4,783,787 for new awards for this program for FY 2024. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $180,000–$475,000.

Estimated Average Size of Awards: $475,000.

Maximum Award: We will not make an award exceeding $475,000 for a single budget period of 12 months. Under 34 CFR 75.104(b) the Secretary may reject, without consideration, or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount.

Minimum Award: The Department will not make an award for less than the amount of $180,000 for a single budget period of 12 months. Under section 418A of the HEA, the Secretary is prohibited from making an award for less than the stated award amount. Therefore, we will reject any application that proposes a CAMP award that is less than the stated minimum award amount.

Note: This approach is intended to promote fairness and transparency in the competitive process.

Estimated Number of Awards: 11.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months (five 12-month budget periods). Under section 418A(e) of the HEA, except under extraordinary circumstances, the Secretary must award grants for a five-year period. Under 34 CFR 75.117(b), applicants must submit a budget narrative accompanied by a budget form prescribed by the Secretary that provides budget information for each budget period of the proposed project period. Therefore, we may reject any application that does not propose a five-year project period as reflected on the applicant's ED 524 form, Section A, and budget narrative form, submitted as a part of the application.

III. Eligibility Information

1. *Eligible Applicants:* An IHE (as defined in section 101 and 102 of the HEA) or a private nonprofit (as those terms are defined in 34 CFR 77.1) organization may apply for a grant to operate a CAMP project. If a private nonprofit organization other than an IHE applies for a CAMP grant, that organization must plan the project in cooperation with an IHE and must propose to operate the project with the facilities of that IHE.

Note: If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

2.a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching. However, consistent with 34 CFR 75.700, which requires an applicant to comply with its approved application, an applicant that proposes non-Federal matching funds and is awarded a grant must provide those funds for each year that the funds are proposed.

b. *Indirect Cost Rate Information:* This program uses a training indirect cost rate. This limits indirect cost reimbursement to an entity's actual indirect costs, as determined in its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. For more information regarding training indirect cost rates, see 34 CFR 75.562. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c) a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: IHEs and nonprofit organizations. The grantee may award subgrants to entities it has identified in an approved application or that it selects through a competition under procedures established by the grantee.

4. *Other:* a. *Budget:* Projects funded under this competition must budget for a three-day Office of Migrant Education annual meeting for CAMP Directors in the Washington, DC area during each year of the project period. Such expenses are allowable uses of grant funds and may be included in the proposed project budget. This meeting may be held virtually if conditions warrant such format.

b. *Build America, Buy America Act:* This program is not subject to the Build America, Buy America Act (Pub. L. 117–58) domestic sourcing requirements.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.* Please note that these Common Instructions supersede the version published on December 27, 2021. Under 34 CFR 206.20, applicants are required to make additional submissions with their application. Those requirements are available at *www.ecfr.gov/current/title-34/subtitle-B/chapter-II/part-206/subpart-C/section-206.20.*

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for CAMP, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 25 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative. An application will not be disqualified if it exceeds the recommended page limit.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

(a) Need for project (Up to 10 points).

(1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the magnitude of the need for the services to be provided or the activities to be carried out by the proposed project. (Up to 10 points)

(b) Quality of the project design (Up to 24 points).

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (Up to 7 points)

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (Up to 5 points)

(iii) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population. (Up to 5 points)

(iv) The extent to which the proposed project demonstrates a rationale (as defined in this notice). (Up to 7 points)

(c) Quality of project services (Up to 24 points).

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (Up to 3 points)

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services. (Up to 7 points)

(ii) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services. (Up to 7 points)

(iii) The likely impact of the services to be provided by the proposed project on the intended recipients of those services. (Up to 7 points)

(d) Quality of project personnel (Up to 10 points).

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (Up to 3 points)

(3) In addition, the Secretary considers the qualifications, including relevant training and experience, of key project personnel. (Up to 7 points)

(e) Adequacy of resources (Up to 12 points).

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization. (Up to 4 points)

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project. (Up to 4 points)

(iii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (Up to 4 points)

(f) Quality of the project evaluation (Up to 20 points).

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (Up to 10 points)

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (Up to 5 points)

(iii) The extent to which the methods of evaluation will, if well implemented, produce promising evidence (as defined in this notice) about the project's effectiveness. (Up to 5 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Additional factors we consider in selecting an application for an award are in section 418A of the HEA. In accordance with section 418A, the Secretary makes CAMP awards based on the number, quality, and promise of the applications. Additionally, in accordance with section 418A, if the final FY 2024 CAMP and High School Equivalency Program appropriations exceed $40,000,000, the Secretary will consider the need to provide an equitable geographic distribution of CAMP awards. The Secretary may consider the need to provide equitable geographic distribution of CAMP awards when—

1. Two or more applicants receive the same score at the funding cutoff for this competition;

2. The Secretary determines that a geographic region is overserved by current CAMP projects;

3. The Secretary determines that a geographic region is underserved by current CAMP projects; or

4. Two or more applicants propose to operate similar CAMP projects in the same geographical region.

When evaluating a potentially overserved or underserved geographic region, the Secretary may consider factors such as migrant or seasonal farmworker population data for a State or region, approximate distance between current and proposed projects, the type of entity of the current or proposed project (*e.g.,* private nonprofit organization, 2-year IHE, 4-year IHE), and the number of students proposed to be served by the current or proposed CAMP project.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency

previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* For the purposes of reporting under 34 CFR 75.110, the Department developed the following performance measures to evaluate the overall effectiveness of CAMP: (1) the percentage of CAMP participants completing the first academic year of their postsecondary program, and (2) the percentage of CAMP participants who, after completing the first academic year of college, continue their postsecondary education. These measures are referred to as CAMP performance measures 1 and 2, respectively.

Applicants must propose annual targets for these measures and establish annual student enrollment targets in their applications. Applicants should identify these targets within their application abstracts. The national target for performance measure 1 for FY 2024 is that 86 percent of CAMP participants will complete the first academic year of their postsecondary program. The national target for performance measure 2 for FY 2024 is that 92 percent of CAMP participants continue their postsecondary education after completing the first academic year of college. The national targets for subsequent years may be adjusted based on additional baseline data.

Peer reviewers evaluate how well applicants propose to meet their application's goals and objectives. Peer reviewers will score related selection criteria on the basis of how well an applicant addresses these performance measures in addition to any other goals and objectives included in the application. Therefore, applicants will want to consider how to demonstrate a sound capacity to provide reliable data on the performance measures, including the project's annual performance targets for addressing the performance measures, as is required by the OMB-approved annual performance report that is included in the application package. All grantees will be required to submit, as part of their annual performance report, information with respect to these performance measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF), text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Adam Schott,

Deputy Assistant Secretary for Policy and Programs, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2023–24999 Filed 11–13–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0118]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Protection and Advocacy of Individual Rights Program Assurances

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before December 14, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Samuel Pierre, 202–987–1928.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Protection and Advocacy of Individual Rights Program Assurances.

OMB Control Number: 1820–0625.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 57.

Total Estimated Number of Annual Burden Hours: 9.

Abstract: Section 509 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended by the Title IV of Workforce Innovation and Opportunity Act (WIOA) and its implementing Federal Regulations at 34 CFR part 381, require the PAIR grantees to submit an application to the RSA Commissioner in order to receive assistance under Section 509 of the Rehabilitation Act. The Rehabilitation Act requires that the application contain Assurances to which the grantees must comply. Section 509(f) of the Rehabilitation Act specifies the Assurances. All 57 PAIR grantees are required to be part of the protection and advocacy system in each State established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 6041 *et seq.*).

Dated: November 8, 2023.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–25080 Filed 11–13–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; High School Equivalency Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2024 for the High School Equivalency Program (HEP), Assistance Listing Number 84.141A. This notice relates to the approved information collection under the Office of Management and Budget (OMB) control number 1894–0006.

DATES:

Applications Available: November 17, 2023.

Deadline for Transmittal of Applications: January 16, 2024.

Deadline for Intergovernmental Review: March 13, 2024.

Pre-Application Webinar Information: The Department will hold a pre-application workshop via webinar for prospective applicants. The date and time of the workshop will be announced on the Department's website at: *https://oese.ed.gov/offices/office-of-migrant-education/high-school-equivalency-program/applicant-information-high-school-equivalency-program/.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.* Please note that these Common Instructions supersede the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT: Dylan Hart-Medina, Office of Migrant

Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, Washington, DC 20202. Telephone: (202) 987–1705. Email: *Dylan.Hart-Medina@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The HEP is designed to assist migratory or seasonal farmworkers (or immediate family members of such workers) to obtain the equivalent of a secondary school diploma and subsequently to gain improved employment, enter military service, or be placed in an institution of higher education (IHE) or other postsecondary education or training.

Priorities: This competition includes one competitive preference priority and one invitational priority. In accordance with 34 CFR 75.105(b)(2)(ii) and (iv), the competitive preference priority is from section 418A(e) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1070d–2(e)) and 34 CFR 206.31.

Competitive Preference Priority: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 15 points to an application for this competitive preference priority, depending on how well the application meets this priority.

This priority is:

Consideration of Prior Experience. (Up to 15 points)

Projects that are expiring (HEP grantees in their final budget period that received their current HEP award in FY 2019) will be considered for additional points under this competitive preference priority. In accordance with section 418A(e) of the HEA, the Department will award up to 15 points for this priority. In accordance with 34 CFR 206.31(a), the Secretary will consider the applicant's experience in implementing an expiring HEP project, with respect to:

(a) Whether the applicant served the number of participants described in its approved application;

(b) The extent to which the applicant met or exceeded its funded objectives with regard to project participants, including the targeted number and percentage of—

(1) Participants who received a general educational development (GED) credential; and

(2) GED credential recipients who were reported as entering postsecondary education programs, career positions, or the military; and

(c) The extent to which the applicant met administrative requirements, including recordkeeping, reporting, and financial accountability under the terms of the previously funded award.

Note: Although 34 CFR 206.31(a)(2)(i) and (ii) refer to general educational development (GED) credentials, the Department recognizes that there are multiple examinations through which high school equivalency (HSE) can be earned and, for the purposes of this notice, uses GED interchangeably with HSE.

Invitational Priority: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Meeting Students' Social, Emotional, and Academic Needs.

Projects that are designed to improve students' social, emotional, academic, and career development, with a focus on underserved students, through one or both of the following:

(a) Creating a positive, inclusive, and identity-safe climate at institutions of higher education through fostering a sense of belonging and inclusion for students who are migratory or seasonal farmworkers or immediate family members of such workers.

(b) Fostering partnerships, including across government agencies (*e.g.,* housing, human services, employment agencies), local educational agencies, community-based organizations, adult learning providers, and postsecondary education institutions, to provide comprehensive services to students who are migratory or seasonal farmworkers or immediate family members of such workers and their families that support students' social, emotional, mental health, and academic needs, and that are inclusive with regard to race, ethnicity, culture, language, and disability status.

Definitions: The definitions of ''migrant farmworker'' and ''seasonal farmworker'' are from 34 CFR 206.5. The definitions of ''demonstrates a rationale,'' ''experimental study,'' ''logic model,'' ''project component,'' ''promising evidence,'' ''quasi-experimental design study,'' ''relevant outcome,'' and ''What Works Clearinghouse Handbooks (WWC Handbooks)'' are from 34 CFR 77.1.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbooks:

(i) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(ii) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(iii) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Migrant farmworker means a seasonal farmworker—as defined in this notice—whose employment required travel that precluded the farmworker from returning to his or her domicile (permanent place of residence) within the same day.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Promising evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following:

(i) A practice guide prepared by WWC reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single study assessed by the Department, as appropriate, that—

(A) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (*e.g.,* a study using regression methods to account for differences between a treatment group and a comparison group); and

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbook.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Seasonal farmworker means a person whose primary employment was in farmwork on a temporary or seasonal basis (that is, not a constant year-round activity) for a period of at least 75 days within the past 24 months.

What Works Clearinghouse Handbooks (WWC Handbooks) means the standards and procedures set forth in the WWC Standards Handbook, Versions 4.0 or 4.1, and WWC Procedures Handbook, Versions 4.0 or 4.1, or in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (all incorporated by reference, see § 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the WWC Handbooks documentation.

Note: The What Works Clearinghouse Procedures and Standards Handbook (Version 4.1), as well as the more recent What Works Clearinghouse Handbooks released in August 2022 (Version 5.0), are available at *https://ies.ed.gov/ncee/wwc/Handbooks.*

Program Authority: 20 U.S.C. 1070d–2.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 206. (e) The Migrant Education Program (MEP) definitions in 34 CFR 200.81. (f) The National Farmworker Jobs Program (NFJP) definitions in 20 CFR 685.110 and eligibility regulations in 20 CFR 685.320.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

Note: The MEP definitions and NFJP definitions and eligibility regulations apply to individuals seeking to qualify for HEP based on past participation in the MEP or NFJP.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $9,366,857 for new awards for this program for FY 2024. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $180,000–$475,000.

Estimated Average Size of Awards: $475,000.

Maximum Award: We will not make an award exceeding $475,000 for a single budget period of 12 months. Under 34 CFR 75.104(b) the Secretary may reject, without consideration or evaluation, any application that proposes a project funding level that exceeds the stated maximum award amount.

Minimum Award: The Department will not make an award for less than the amount of $180,000 for a single budget period of 12 months. Under section 418A of the HEA, the Secretary is prohibited from making an award for less than the stated award amount. Therefore, we will reject any application that proposes a HEP award that is less than the stated minimum award amount.

Note: This approach is intended to promote fairness and transparency in the competitive process.

Estimated Number of Awards: 20.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months (five 12-month budget periods). Under section 418A(e) of the HEA, except under extraordinary circumstances, the Secretary must award grants for a five-year period. Under 34 CFR 75.117(b), applicants must submit a budget narrative accompanied by a budget form prescribed by the Secretary that provides budget information for each budget period of the proposed project period. Therefore, we may reject any application that does not propose a five-year project period as reflected on the applicant's ED 524 form, Section A, and budget narrative form, submitted as a part of the application.

III. Eligibility Information

1. *Eligible Applicants:* An IHE (as defined in section 101 and 102 of the HEA) or a private nonprofit (as those terms are defined in 34 CFR 77.1) organization may apply for a grant to operate a HEP project. If a private nonprofit organization other than an IHE applies for a HEP grant, that organization must plan the project in cooperation with an IHE and must propose to operate some aspects of the project with the facilities of that IHE.

Note: If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

2a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching. However, consistent with 34 CFR 75.700, which requires an applicant to comply with its approved application, an applicant that proposes non-Federal matching funds and is awarded a grant must provide those funds for each year that the funds are proposed.

b. *Indirect Cost Rate Information:* This program uses a training indirect cost rate. This limits indirect cost reimbursement to an entity's actual indirect costs, as determined in its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. For more information regarding training indirect cost rates, see 34 CFR 75.562. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c) a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: IHEs and nonprofit organizations. The grantee may award subgrants to entities it has identified in an approved application or that it selects through a competition under procedures established by the grantee.

4. *Other:* a. *Budget:* Projects funded under this competition must budget for a three-day Office of Migrant Education annual meeting for HEP Directors in the Washington, DC area during each year of the project period. Such expenses are allowable uses of grant funds and may be included in the proposed project budget. This meeting may be held virtually if conditions warrant such format.

b. *Build America, Buy America Act:* This program is not subject to the Build America, Buy America Act (Pub. L. 117–58) domestic sourcing requirements.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.* Please note that these Common Instructions supersede the version published on December 27, 2021. Under 34 CFR 206.20, applicants are required to make additional submissions with their application. Those requirements are available at *www.ecfr.gov/current/title-34/subtitle-B/chapter-II/part-206/subpart-C/section-206.20.*

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for HEP, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define "business information" and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under "Other Attachments Form," please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 25 pages and (2) use the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative. An application will not be disqualified if it exceeds the recommended page limit.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

(a) Need for project (Up to 10 points).

(1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the magnitude of the need for the services to be provided or the activities to be carried out by the proposed project. (Up to 10 points)

(b) Quality of the project design (Up to 24 points).

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the

Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (Up to 7 points)

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (Up to 5 points)

(iii) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population. (Up to 5 points)

(iv) The extent to which the proposed project demonstrates a rationale (as defined in this notice). (Up to 7 points)

(c) Quality of project services (Up to 24 points).

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (Up to 3 points)

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services. (Up to 7 points)

(ii) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services. (Up to 7 points)

(iii) The likely impact of the services to be provided by the proposed project on the intended recipients of those services. (Up to 7 points)

(d) Quality of project personnel (Up to 10 points).

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (Up to 3 points)

(3) In addition, the Secretary considers the qualifications, including relevant training and experience, of key project personnel. (Up to 7 points)

(e) Adequacy of resources (Up to 12 points).

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization. (Up to 4 points)

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project. (Up to 4 points)

(iii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (Up to 4 points)

(f) Quality of the project evaluation (Up to 20 points).

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (Up to 10 points)

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (Up to 5 points)

(iii) The extent to which the methods of evaluation will, if well implemented, produce promising evidence (as defined in this notice) about the project's effectiveness. (Up to 5 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Additional factors we consider in selecting an application for an award are in section 418A of the HEA. In accordance with section 418A, the Secretary makes HEP awards based on the number, quality, and promise of the applications. Additionally, in accordance with section 418A, if final FY 2024 HEP and College Assistance Migrant Program appropriations exceed $40,000,000, the Secretary will consider the need to provide an equitable geographic distribution of HEP awards. The Secretary may consider the need to provide equitable geographic distribution of HEP awards when—

1. Two or more applicants receive the same score at the funding cutoff for this competition;

2. The Secretary determines that a geographic region is overserved by current HEP projects;

3. The Secretary determines that a geographic region is underserved by current HEP projects; or

4. Two or more applicants propose to operate similar HEP projects in the same geographical region.

When evaluating a potentially overserved or underserved geographic region, the Secretary may consider factors such as migrant or seasonal farmworker population data for a State or region, approximate distance between current and proposed projects, the type of entity of the current or proposed project (*e.g.,* private nonprofit organization, 2-year IHE, 4-year IHE), and the number of students proposed to be served by the current or proposed HEP project.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a

judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* For the purposes of reporting under 34 CFR 75.110, the Department developed the following performance measures to evaluate the overall effectiveness of HEP: (1) the percentage of HEP participants exiting the program having received a HSE diploma, and (2) the percentage of HSE diploma recipients who enter postsecondary education or training programs, upgraded employment, or the military. These measures are referred to as HEP performance measures 1 and 2, respectively.

Applicants must propose annual targets for these measures and establish annual student enrollment targets in their applications. Applicants should identify these targets within their application abstracts. The national target for performance measure 1 for FY 2024 is that 69 percent of HEP participants exit the program having received an HSE credential. The national target for performance measure 2 for FY 2024 is that 80 percent of HEP HSE diploma recipients will enter postsecondary education or training programs, upgraded employment, or the military. The national targets for subsequent years may be adjusted based on additional baseline data.

Peer reviewers evaluate how well applicants propose to meet their application's goals and objectives. Peer reviewers will score related selection criteria on the basis of how well an applicant addresses these performance measures in addition to any other goals and objectives included in the application. Therefore, applicants will want to consider how to demonstrate a sound capacity to provide reliable data on the performance measures, including the project's annual performance targets for addressing the performance measures, as is required by the OMB-approved annual performance report that is included in the application package. All grantees will be required to submit, as part of their annual performance report, information with respect to these performance measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF), text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Adam Schott,

Deputy Assistant Secretary for Policy and Programs, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2023–25001 Filed 11–13–23; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: Election Assistance Commission.

ACTION: Sunshine Act notice; notice of public meeting agenda.

SUMMARY: The U.S. Election Assistance Commission (EAC) will conduct a public meeting to discuss the 2023 Voluntary Electronic Poll Book Pilot Program and consider next steps for the program.

DATES: Monday, December 4, 2:00 p.m.–3:00 p.m. EST.

ADDRESSES: The meeting will be virtual and livestreamed on the U.S. Election Assistance Commission's YouTube Channel: *https://www.youtube.com/channel/UCpN6i0g2rlF4ITWhwvBwwZw.*

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct a public meeting to discuss the 2023 EAC Voluntary Electronic Poll Book Pilot Program and consider next steps for the program.

Agenda: The U.S. Election Assistance Commission (EAC) will consider the adoption of the Voluntary Electronic Poll Book Pilot Program as a standing program at the agency. To facilitate this conversation, the EAC Commissioners will hear from the EAC's Election Supporting Technology Evaluation Program (ESTEP) staff on feedback they have received on the pilot and recommendations for next steps for implementation.

Background: Under the authority of the Help America Vote Act (HAVA), the EAC created the Election Supporting Technology Evaluation Program (ESTEP) to establish requirements and guidelines specific to election technologies that are not covered under the Voluntary Voting System Guidelines (VVSG). The e-poll book pilot is the first in a series of pilots conducted by the ESTEP program, which will also examine voter registration databases, election night reporting systems, and electronic ballot delivery systems.

The e-poll book pilot program testing took place between January and August 2023. The pilot involved two VSTLs, Pro V&V and SLI Compliance, that tested e-poll book devices from five commercial manufacturers, and two in-house developers. These systems were tested against the Voluntary Electronic Poll Book Requirements (Version 0.9) developed by ESTEP in consultation with the National Institute of Standards and Technology (NIST), cybersecurity and accessibility experts, and other key stakeholders.

The full agenda will be posted in advance on the EAC website: *https://www.eac.gov.*

Status: This meeting will be open to the public.

Camden Kelliher,

Deputy General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2023–25135 Filed 11–9–23; 11:15 am]

BILLING CODE 4810–71–P

ELECTION ASSISTANCE COMMISSION

Request for Comment: Election Supporting Technology Evaluation Program Manufacturer Registration Form

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice, request for comment.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the U.S. Election Assistance Commission (EAC) gives notice that it is requesting from the Office of Management and Budget (OMB) approval for the information collection of one Election Supporting Technology Evaluation Program form. The information collected is to be used to improve the quality of election-supporting technology used in federal elections, and to collect necessary key information on election-supporting technology manufacturers and their systems. Participation in this program is voluntary.

DATES: Comments must be received by 5 p.m. eastern on Friday, January 12, 2023.

ADDRESSES: To view the Election Supporting Technology Evaluation Program form, see: *https://www.eac.gov/voting-equipment/Election_Supporting_Technology_Evaluation_Program.* Comments on the proposed form should be submitted electronically via *https://www.regulations.gov* (docket IDs: EAC–2023–0003). Written comments on the proposed information collection can also be sent to the U.S. Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001, Attn: Election Supporting Technology Evaluation Program.

FOR FURTHER INFORMATION CONTACT: Elizabeth Beatrice, Election Technology Specialist, Election Supporting Technology Evaluation Program, Washington, DC, (202)–748–2298. Email: *estep@eac.gov.*

All requests and submissions should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: ESTEP Manufacturer Registration Form, OMB Number Pending.

Purpose: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the EAC is publishing notice of the proposed collection of information set forth in this document.

The EAC Election Supporting Technology Evaluation Program evaluates the security and accessibility of election-supporting technologies, including electronic poll books, voter registration systems, electronic ballot delivery systems, and election night reporting databases.

The program is to publish one form. This is to be used to collect key information concerning election-supporting technology manufacturers. The application for registration in the Election Supporting Technology Evaluation Program collects administrative information on manufacturers and their organizations.

This information is collected to improve the quality of election-supporting technology used in federal elections.

Public Comments: We are soliciting public comments to permit the EAC to:

• Evaluate whether the proposed information collection is necessary and sufficient for the proper functions of the Election Supporting Technology Evaluation Program.

• Evaluate the accuracy of our estimate of burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your submitted comments, including your personal information, will be available for public review.

Respondents: Election Supporting Technology Manufacturers, State and Local Election Officials.

Annual Reporting Burden

OMB approval is requested for 3 years.

ANNUAL BURDEN ESTIMATES

Instrument	Estimated number of respondents	Total number of responses per year	Average burden hours per response	Annual burden hours
ESTEP Manufacturer Registration Form	10	1	2	20
Total	....	10	....	20

The estimated cost of the annualized cost of this burden is: $1,681.

Camden Kelliher,

Deputy General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2023–25057 Filed 11–13–23; 8:45 am]

BILLING CODE 4810–71–P

ELECTION ASSISTANCE COMMISSION

Request for Comment: Voluntary Electronic Poll Book Requirements Version 1.0

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice, request for comment.

SUMMARY: The U.S. Election Assistance Commission (EAC) is publishing Version 1.0 of the Voluntary Electronic Poll Book Requirements (VEPBR v1.0) for public comment. The intent of the VEPBR v1.0 is to improve the functionality, security, and accessibility of electronic poll books used in Federal elections. The VEPBR v1.0 establishes baseline requirements for electronic poll book manufacturers to receive certification through the EAC's Election Supporting Technology Evaluation Program (ESTEP). This version replaces the draft version (0.9) utilized during the EAC's Voluntary Electronic Poll Book Pilot Program in 2021–2023. Participation in this program is voluntary.

DATES: Comments must be received by 5 p.m. eastern on Thursday, December 14, 2023.

ADDRESSES: To view the VEPBR v1.0, see: *https://www.eac.gov/voting-equipment/Election_Supporting_Technology_Evaluation_Program.* Comments on the proposed VEPBR v1.0 should be submitted electronically via *https://www.regulations.gov* (docket IDs: EAC–2023–0005). Written comments on the proposed document can also be sent to the U.S. Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001, Attn: Election Supporting Technology Evaluation Program.

FOR FURTHER INFORMATION CONTACT: Elizabeth Beatrice, Election Technology Specialist, Election Supporting Technology Evaluation Program, Washington, DC, (202) 748–2298. Email: *estep@eac.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: Under the authority of the Help America Vote Act of 2002 (HAVA), the U.S. Election Assistance Commission (EAC) developed the Election Supporting Technology Evaluation Program (ESTEP). This Program establishes a protocol for testing critical election-supporting technologies to ensure their conformance with baseline Federal standards for security and accessibility. While participation in this Program is voluntary, EAC certification benefits the public and wider election technology field by supporting State and local election officials, increasing quality control and quality assurance of election-supporting technologies, and increasing voter confidence in the use of these systems.

The VEPBR v1.0 will be used primarily by electronic poll book system manufacturers and Voting System Test Laboratories (VSTLs) as a baseline set of requirements for electronic poll book system security and accessibility to which States or Territories will add their specific requirements, as necessary. Manufacturers will use these requirements when they design and build new e-poll book systems. VSTLs will refer to this document when they develop test plans for the analysis and testing of e-poll book systems to verify whether the system meets these requirements. States and Territories may utilize these requirements as a baseline and include additional requirements, as deemed necessary by their legislation or other regulations.

Public Comments: Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your submitted comments, including your personal information, will be available for public review.

Respondents: Election Supporting Technology Manufacturers, Voting System Test Laboratories, State and Local Election Officials.

Camden Kelliher,

Deputy General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2023–25054 Filed 11–13–23; 8:45 am]

BILLING CODE 4810–71–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: U.S. Election Assistance Commission.

ACTION: Sunshine Act notice; notice of public meeting agenda.

SUMMARY: Public Meeting: U.S. Election Assistance Commission Technical Guidelines Development Committee 2023 Annual Meeting.

DATES: Tuesday, December 5, 2023, 8:30 a.m.–5:00 p.m. ET.

Registration for attending this event in person is required and must be submitted by November 20, 2023. The registration form will be available at *www.eac.gov/events/2023/12/05/eac-technical-guidelines-development-committee-annual-meeting-december-5-2023.*

ADDRESSES: National Cybersecurity Center of Excellence, 9700 Great Seneca Highway, Rockville, MD 20850.

Information on where the public can watch the livestream of this meeting will be available at *www.eac.gov/events/2023/12/05/eac-technical-guidelines-development-committee-annual-meeting-december-5-2023.*

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct the 2023 annual meeting of the EAC Technical Guidelines Development Committee (TGDC) to discuss regular business of the board.

Agenda: The EAC and TGDC members will hold an annual meeting to discuss program updates for EAC Testing and Certification and the National Institute of Standards and Technology (NIST) Voting Program. The meeting will also include the status of the Voluntary Electronic Poll Book Pilot Program, the annual review of the Voluntary Voting System Guidelines (VVSG), lab testing strategies, and more.

The full agenda will be posted in advance on the EAC website: *www.eac.gov/events/2023/12/05/eac-technical-guidelines-development-committee-annual-meeting-december-5-2023.*

Background: Section 221 of the Help America Vote Act (HAVA) of 2002 (52 U.S.C. 20971(b)) requires that the EAC to adopt voluntary voting system guidelines, and to provide for the testing, certification, decertification, and recertification of voting system hardware and software.

The TGDC was established in accordance with the requirements of Section 221 of the Help America Vote Act of 2002 (Pub. L. 107–252, codified at 52 U.S.C. 20961), to act in the public interest to assist the Executive Director of the EAC in the development of voluntary voting system guidelines.

This meeting will be open to the public.

Camden Kelliher,

Deputy General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2023–25134 Filed 11–9–23; 11:15 am]

BILLING CODE 4810–71–P

ELECTION ASSISTANCE COMMISSION

Request for Comment: Election Supporting Technology Evaluation Program Manual

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice, request for comment.

SUMMARY: The U.S. Election Assistance Commission (EAC) is publishing the Election Supporting Technology Evaluation Program (ESTEP) Manual v1.0 for public comment. The intent of this Manual is to assist in the facilitation of Program activities and to serve as a guide for manufacturers and voting system test laboratories that select to participate in the Program. Participation in this program is voluntary.

DATES: Comments must be received by 5 p.m. eastern on Thursday, December 14, 2023.

ADDRESSES: To view the Manual v1.0, see: *https://www.eac.gov/voting-equipment/Election_Supporting_Technology_Evaluation_Program.* Comments on the proposed ESTEP Manual v1.0 should be submitted electronically via *https://www.regulations.gov* (docket IDs: EAC–2023–0004). Written comments on the proposed document can also be sent to the U.S. Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001, Attn: Election Supporting Technology Evaluation Program.

FOR FURTHER INFORMATION CONTACT: Elizabeth Beatrice, Election Technology Specialist, Election Supporting Technology Evaluation Program, Washington, DC, (202)–748–2298. Email: *estep@eac.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: Under the authority of the Help America Vote Act of 2002 (HAVA), the U.S. Election Assistance Commission (EAC) developed the Election Supporting Technology Evaluation Program (ESTEP). This Program establishes a protocol for testing critical election-supporting technologies to ensure their conformance with baseline Federal standards for security and accessibility. While participation in this Program is voluntary, EAC certification benefits the public and wider election technology field by supporting State and local election officials, increasing quality control and quality assurance of election-supporting technologies, and increasing voter confidence in the use of these systems.

This Manual establishes the minimum requirements for participation in this Program. If election-supporting technology manufacturers decide to participate, then they must conform to the Program Manual's procedural requirements.

Public Comments: Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your submitted comments, including your personal information, will be available for public review.

Respondents: Election Supporting Technology Manufacturers, Voting

System Test Laboratories, State and Local Election Officials.

Camden Kelliher,

Deputy General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2023–25058 Filed 11–13–23; 8:45 am]

BILLING CODE 4810–71–P

DEPARTMENT OF ENERGY

Notice of Request for Information (RFI) Regarding Challenges and Opportunities at the Interface of Wind Turbines and Radar Technology

AGENCY: Office Energy Efficiency and Renewable Energy, Wind Energy Technologies Office, Department of Energy.

ACTION: Request for information (RFI).

SUMMARY: The U.S. Department of Energy (DOE) invites public comment on its request for information (RFI) number DE–FOA–0003166 regarding mitigation strategies for the technical and operational effects of wind turbines on critical radar missions, as required by the Infrastructure Investment and Jobs Act also known as the Bipartisan Infrastructure Law (BIL).

DATES: Responses to the RFI must be received by January 12, 2024.

ADDRESSES: Comments to the RFI must be provided in writing. Interested parties are to submit their written comments electronically to *windenergyrfi@ee.doe.gov* and include ''Comment on RFI: Challenges & Opportunities at the Interface of Wind Turbines and Radar Technology'' in the subject line of the email. Email attachments can be provided as a Microsoft Word (.docx) file or an Adobe PDF (.pdf) file, prepared in accordance with the detailed instructions in the RFI. Documents submitted electronically should clearly indicate which topic areas and specific questions are being addressed and should be limited to no more than 25 MB in size. The complete RFI DE–FOA–0003166 document is located at *https://eere-exchange.energy.gov/.*

FOR FURTHER INFORMATION CONTACT: Hannah Taylor, *hannah.taylor@ee.doe.gov,* (240) 220–8077.

Further instructions can be found in the RFI document DE–FOA–0003166 posted on EERE Exchange at *https://eere-exchange.energy.gov/.*

SUPPLEMENTARY INFORMATION: DOE's Office of Energy Efficiency and Renewable Energy, on behalf of the Wind Energy Technologies Office and in collaboration with the Wind Turbine-Radar Interference Mitigation (WTRIM) Working Group, issued this RFI to seek public input to help inform DOE's implementation of the BIL. The WTRIM Working Group has been working to identify and develop the means to mitigate the technical and operational effects of wind turbines on critical radar missions. This RFI represents the latest effort by the WTRIM Working Group to better understand the challenges wind developers are facing regarding radar interference and to determine the capability of the marketplace to find solutions that mitigate the impact of wind turbine interference on existing and future radar systems.

Specific questions can be found in the RFI. The RFI DE–FOA–0003166 is available at: *https://eere-exchange.energy.gov/.*

Confidential Business Information: Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Signing Authority: This document of the Department of Energy was signed on November 6, 2023, by Dr. Becca Jones-Albertus, Deputy Assistant Secretary for Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 8, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2023–25029 Filed 11–13–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Adjustment of Indemnification Amount for Inflation

AGENCY: Office of the General Counsel, U.S. Department of Energy.

ACTION: Notice of adjusted indemnification amount.

SUMMARY: The Department of Energy (DOE or the Department) is announcing the adjusted amount of indemnification provided under subsection 170d. of the Atomic Energy Act of 1954 (AEA), commonly known as the Price-Anderson Act. Subsection 170t. of the AEA requires an inflation adjustment of the indemnification amount at least once during each 5-year period following July 1, 2003, in accordance with the aggregate percentage change in the Consumer Price Index (CPI). This notice announces $16,592,154,000 as the fourth inflation-adjusted indemnification amount based on the aggregate percentage change in the CPI during the 5-year period from July 1, 2018 to July 1, 2023.

DATES: This action is effective on November 14, 2023.

FOR FURTHER INFORMATION CONTACT: Meghan Claire Hammond, Attorney Advisor (GC–72), Office of the General Counsel, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585, (202) 586–3806.

SUPPLEMENTARY INFORMATION: The Price-Anderson Act (PAA), section 170 of the AEA (42 U.S.C. 2210), establishes a system of financial protection for persons who may be liable for a ''nuclear incident,'' as defined in section 11q. of the AEA (42 U.S.C. 2014q.). The Price-Anderson Act is administered by DOE with respect to the nuclear activities of contractors acting on DOE's behalf. Subsection 170d. provides that the Secretary of Energy shall enter into agreements of indemnification with any person who may conduct activities under a contract with DOE that involve the risk of public liability and that are not subject to the financial protection requirements of the Nuclear Regulatory Commission system. DOE's Price-Anderson Act indemnification contract provisions are codified in the Department of Energy Acquisition Regulation (DEAR), which sets forth a standard nuclear indemnification clause, the Nuclear Hazard Indemnity Clause at 48 CFR 952.250–70, that is incorporated into all DOE contracts and subcontracts in which the contractor is under risk of public liability for a nuclear incident or precautionary evacuation, as those terms are defined in the PAA.

Subsection 170t.(2) of the AEA requires that the Secretary adjust for inflation the amount of indemnification provided under an indemnification agreement pursuant to subsection 170d. at least once during each 5-year period following July 1, 2003, in accordance with the aggregate percentage change in the Consumer Price Index (CPI). The CPI is defined in subsection 170t.(3) to mean the CPI for all urban consumers published by the Secretary of Labor. DOE's initial adjustment increased the indemnification amount to $11.961 billion. 74 FR 52793 (October 14, 2009). The second inflation adjustment, for the period following July 1, 2013, increased the indemnification amount to $12,697,798,000. 78 FR 56868 (September 16, 2013). DOE made its most recent inflation adjustment to the indemnification amount to $13,703,464,000 for the period following July 1, 2018. 83 FR 49375 (October 1, 2018).

This notice announces DOE's fourth periodic inflation adjustment for the 5-year period following July 1, 2023 based on the aggregate percentage change in the CPI between July 1, 2018 and July 1, 2023.

The CPI used to calculate the inflation adjustment for the period following July 1, 2018 was 251.989 (June 2018). The CPI used to calculate the inflation adjustment that is the subject of this Notice is 305.109 (June 2023). This difference represents an increase of approximately 21.08%. Application of this increase to the current DOE indemnification amount results in an inflation-adjusted indemnification amount rounded to the nearest thousand of $16,592,154,000.

The inflation adjustment under AEA, subsection 170t., applies only to a nuclear incident within the United States. There is no corresponding inflation adjustment for a nuclear incident outside the United States. Accordingly, the indemnification amount for a nuclear incident outside the United States continues to be $500 million.

This notice of adjusted indemnification amount is a ''rule'' as defined in the Administrative Procedure Act (APA) (5 U.S.C. 551(4)). However, the APA (5 U.S.C. 553(b)(B)) does not require an agency to seek comment on a proposed rule prior to publishing a final rule ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' In this instance, DOE has concluded that solicitation of public comment is unnecessary. Congress has required DOE to adjust the amount of indemnification provided under an agreement of indemnification pursuant to section 170d. to reflect inflation in the initial and each subsequent 5-year period following July 1, 2003. The statute provides no discretion regarding the substance of the adjustment. DOE is required only to perform a ministerial computation to determine the relevant amount. On the same basis, DOE finds good cause, pursuant to 5 U.S.C. 553(d)(3) to waive the requirement for a 30-day delay in the effective date for this rule. As such, this rule is effective November 14, 2023.

DOE has determined that this notice of adjusted indemnification amount is the type of action that does not individually or cumulatively have a significant impact on the human environment as set forth in DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, the rule is covered under the categorical exclusion in paragraph A6 of appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. The Department has made its procedures and policies available on the Office of General Counsel's website: *www.energy.gov/gc/office-general-counsel.* Because DOE, in this final rule, is performing only a ministerial computation to determine the relevant indemnification amount as required by Congress, a general notice of proposed rulemaking is not required, and the analytical requirements of the Regulatory Flexibility Act do not apply to this rulemaking.

Signing Authority

This document of the Department of Energy was signed on November 7, 2023, by Samuel Walsh General Counsel, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 8, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2023–25030 Filed 11–13–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–542–000]

Golden Triangle Storage, L.L.C.; Notice of Schedule for the Preparation of an Environmental Assessment for the Golden Triangle Storage Expansion Project

On September 12, 2023, Golden Triangle Storage, L.L.C. (GTS) filed an application in Docket No. CP23–542–000 requesting a Certificate of Public Convenience and Necessity pursuant to section 7(c) of the Natural Gas Act to construct and operate certain natural gas storage facilities. The proposed project is known as the Golden Triangle Storage Expansion Project (Project) and would authorize GTS to construct additional storage caverns, compressor units, and appurtenant facilities at its existing storage facility in Jefferson County, Texas. According to GTS, the Project would add approximately 14.4 billion cubic feet of new natural gas storage capacity to meet market demand in the Gulf Coast Region and enhance operational capabilities at the existing storage facilities.

On September 20, 2023, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing Federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a Federal authorization within 90 days of the date of issuance of the Commission staff's environmental document for the Project.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the Project and the planned schedule for the completion of the environmental review.[1]

Schedule for Environmental Review

Issuance of EA—February 1, 2024
90-day Federal Authorization Decision Deadline[2]—May 1, 2024

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

GTS proposes to construct and operate two underground salt dome natural gas storage caverns at its existing storage site, six additional 5,500 horsepower compressor units at its existing compressor station, a new brine disposal well and brine pipeline, and appurtenant facilities, in Jefferson County, Texas. Construction of the proposed facilities would temporarily disturb about 31 acres of land. Following construction, GTS would maintain about 5.2 acres of land for permanent operation of the Project's facilities; the remaining acreage would be restored and revert to former uses.

Background

On September 21, 2023, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Golden Triangle Storage Expansion Project* (Notice of Scoping). The Notice of Scoping was sent to affected landowners; Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. In response to the Notice of Scoping, the Commission received comments from the Texas Parks and Wildlife Department, the Sierra Club, and U.S. Environmental Protection Agency. The primary issues raised by the commentors are construction procedures, flood risks, effects on threatened and endangered species, water quality, air quality, hazardous waste management, and impacts to environmental justice communities. All substantive comments will be addressed in the EA.

[1] 40 CFR 1501.10 (2020).

[2] The Commission's deadline applies to the decisions of other Federal agencies, and State agencies acting under federally delegated authority, that are responsible for Federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by Federal law.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP23–542), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: November 7, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–25039 Filed 11–13–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 943–142]

Public Utility District No. 1 of Chelan County, Washington; Notice of Application for Approval of Contract for the Sale of Power Under Section 22 of the Federal Power Act

Take notice that on May 16, 2023, Public Utility District No. 1 of Chelan County, Washington (Chelan PUD) filed with the Commission an application for approval of a contract for the sale of power from its licensed Rock Island Hydroelectric Project No. 943 for a period beyond the expiration of its existing license for the project. The project is located on the Columbia River in Chelan and Douglas Counties, Washington.

Section 22 of the Federal Power Act, 16 U.S.C. 815, provides that contracts for the sale and delivery of power for periods extending beyond the termination date of a license may be entered into upon the joint approval of the Commission and the appropriate state public service commission or other similar authority in the state in which the sale or delivery of power is made.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/LogIn.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888

First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–943–142.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–943–142) in the docket number field to access the document. For assistance, contact FERC Online Support.

Comment Date: 5:00 p.m. Eastern Time on December 6, 2023.

Dated: November 6, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–24992 Filed 11–13–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–112–000.
Applicants: Elliott Associates, L.P., Elliott International, L.P., The Liverpool Limited Partnership.
Description: Elliott Associates, L.P., et al. submits Response to FERC's October 6, 2023 Deficiency Letter.
Filed Date: 11/2/23.
Accession Number: 20231102–5193.
Comment Date: 5 p.m. ET 11/28/23.

Docket Numbers: EC23–112–000.
Applicants: Elliott Associates, L.P., Elliott International, L.P., The Liverpool Limited Partnership.
Description: Gibson, Dunn & Crutcher, LLP submits work papers in support of the November 2, 2023 response to FERC's Deficiency Letter re the July 21, 2023 application of Elliot Associates, L.P. et al.
Filed Date: 11/6/23.
Accession Number: 20231106–0007.
Comment Date: 5 p.m. ET 11/28/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2924–017.
Applicants: Kleen Energy Systems, LLC.
Description: Notice of Non-Material Change in Status of Kleen Energy Systems, LLC.
Filed Date: 11/6/23.
Accession Number: 20231106–5167.
Comment Date: 5 p.m. ET 11/27/23.

Docket Numbers: ER12–779–000; ER12–995–000.
Applicants: Cherokee County Cogeneration Partners, LLC, Cherokee County Cogeneration Partners, LLC.
Description: Notice of Cancellation of Rate Market-Based Rate Authority and Tariff of Cherokee County Cogeneration Partners, LLC.
Filed Date: 11/2/23.
Accession Number: 20231102–5248.
Comment Date: 5 p.m. ET 11/24/23.

Docket Numbers: ER23–2398–003.
Applicants: Arizona Public Service Company.
Description: Compliance filing: Amendment No. 2 to APS Compliance Filing on Interconnection Reforms to be effective 9/30/2023.
Filed Date: 11/6/23.
Accession Number: 20231106–5148.
Comment Date: 5 p.m. ET 11/27/23.

Docket Numbers: ER23–2813–000.
Applicants: Castle Solar, LLC.
Description: Supplement to September 12, 2023, Castle Solar, LLC tariff filing.
Filed Date: 11/6/23.
Accession Number: 20231106–5165.
Comment Date: 5 p.m. ET 11/16/23.

Docket Numbers: ER23–2927–001.
Applicants: Southwest Power Pool, Inc.
Description: Tariff Amendment: Amended Filing in ER23–2927—Multi-Day Reliability Assessment Design to be effective 1/16/2024.
Filed Date: 11/7/23.
Accession Number: 20231107–5073.
Comment Date: 5 p.m. ET 11/28/23.

Docket Numbers: ER24–1–001.
Applicants: Consolidated Edison Company of New York, Inc.
Description: Tariff Amendment: Amended Value Stack Monthly Credit to be effective 10/2/2023.
Filed Date: 11/7/23.
Accession Number: 20231107–5111.
Comment Date: 5 p.m. ET 11/28/23.

Docket Numbers: ER24–352–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX–CGRP 10 (Copano & Port Bay Solar) Generation Interconnection Agr to be effective 10/18/2023.
Filed Date: 11/6/23.
Accession Number: 20231106–5135.
Comment Date: 5 p.m. ET 11/27/23.

Docket Numbers: ER24–353–000.
Applicants: Massachusetts Electric Company.
Description: Notice of Cancellation of Interconnection Agreement with Dichotomy Collins Hydro LLC of Massachusetts Electric Company.
Filed Date: 11/3/23.
Accession Number: 20231103–5259.
Comment Date: 5 p.m. ET 11/24/23.

Docket Numbers: ER24–354–000.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Termination of Service Agreement No. 99 under Pacific Gas and Electric Company's FERC Electric Tariff Volume No. 5.
Filed Date: 11/1/23.
Accession Number: 20231101–5289.
Comment Date: 5 p.m. ET 11/22/23.

Docket Numbers: ER24–355–000.
Applicants: California Independent System Operator Corporation.
Description: Petition for Approval of Disposition of Penalty Assessment Proceeds and non-Refundable Interconnection Financial Security of the California Independent System Operator Corporation.
Filed Date: 11/2/23.
Accession Number: 20231102–5249.
Comment Date: 5 p.m. ET 11/24/23.

Docket Numbers: ER24–356–000.
Applicants: San Diego Gas & Electric Company.
Description: TO5 Formula Depreciation Rate Change for Common Plant and Electric General Plant of San Diego Gas & Electric Company.
Filed Date: 11/2/23.
Accession Number: 20231102–5252.
Comment Date: 5 p.m. ET 11/24/23.

Docket Numbers: ER24–357–000.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.
Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2023–11–07_SA 3028 Ameren IL-Prairie Power Project #40 Mason City Tap to be effective 1/7/2024.
Filed Date: 11/7/23.
Accession Number: 20231107–5066.
Comment Date: 5 p.m. ET 11/28/23.

Docket Numbers: ER24–358–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Industrial Bravo Project Generation Interconnection Agreement to be effective 10/18/2023.
Filed Date: 11/7/23.
Accession Number: 20231107–5110.
Comment Date: 5 p.m. ET 11/28/23.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH24–2–000.
Applicants: ArcLight Capital Holdings, LLC.
Description: ArcLight Capital Holdings, LLC submits FERC 65–A Exemption Notification.
Filed Date: 11/3/23.

Accession Number: 20231103–5264.
Comment Date: 5 p.m. ET 11/24/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: November 7, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–25035 Filed 11–13–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP24–147–000.
Applicants: Adelphia Gateway, LLC.
Description: § 4(d) Rate Filing: Adelphia Gateway Amended NRA Filing to be effective 11/6/2023.
Filed Date: 11/6/23.
Accession Number: 20231106–5145.
Comment Date: 5 p.m. ET 11/20/23.

Docket Numbers: RP24–148–000.
Applicants: EQT Energy, LLC, Roanoke Gas Company.
Description: Joint Petition for Limited Waiver of Capacity Release Regulations, et al. of EQT Energy, LLC, et al.
Filed Date: 11/7/23.
Accession Number: 20231107–5045.
Comment Date: 5 p.m. ET 11/15/23.

Docket Numbers: RP24–149–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Hartree Nov 2023) to be effective 11/8/2023.
Filed Date: 11/7/23.
Accession Number: 20231107–5049.
Comment Date: 5 p.m. ET 11/20/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP23–1088–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: Report Filing: Notice of Nov 3, 2023 In-Service for Bakken Incremental System in CP22–508–000 to be effective N/A.
Filed Date: 11/6/23.
Accession Number: 20231106–5077.
Comment Date: 5 p.m. ET 11/20/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: November 7, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–25034 Filed 11–13–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Privacy Act of 1974; System of Records

AGENCY: Federal Energy Regulatory Commission (FERC), DOE.

ACTION: Rescindment of a system of records notice.

SUMMARY: Pursuant to the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular No. A–108, the Federal Energy Regulatory Commission (FERC) proposes to rescind an existing system of records notice. The following SORN is being proposed for rescindment: ''FERC–61: Request for Commission Publications and Information.'' The basis for rescindment is explained below.

DATES: Please submit comments on this rescindment notice on or before December 14, 2023. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by FERC, the rescindment will become effective a minimum of 30 days after the date of publication in the **Federal Register**. If FERC receives public comments, FERC shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted in writing to Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, or electronically to *privacy@ferc.gov.* Comments should indicate that they are submitted in response to ''*Request for Commission Publications and Information (FERC–61).*''

FOR FURTHER INFORMATION CONTACT: Lakesha Abney, Supervisory Records and Information Management Specialist, Office of the Secretary, Records Management Team, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8400.

SUPPLEMENTARY INFORMATION: OMB requires that each agency provide assurance that systems of records do not duplicate any existing agency or government-wide systems of records. FERC–61: Requests for Commission Publications and Information) was identified for rescindment because the SORN is duplicative and covered by another FERC system of records. Specifically, FERC–61: Requests for Commission Publications and Information is duplicative of and shares the same purpose as the records covered by FERC–62: Public Information Requests, **Federal Register** Citation: 88 FR 36308.

SYSTEM NAME AND NUMBER:

Request for Commission Publications and Information—FERC–61.

HISTORY:

79 FR 17532 (March 28, 2014).

Issued: November 7, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–25040 Filed 11–13–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15294–000]

JT Mesa Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On December 14, 2022, JT Mesa Hydro, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the to be located near the City of Raton in Colfax County, New Mexico. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of one of two alternative configurations, the Throttle Alternative and the Closed-Loop Alternative.

The Throttle Alternative would consist of the following facilities: (1) a new 109-acre upper reservoir with a storage capacity of 4,000 acre-feet at a water surface elevation of 7,830 feet above mean sea level (msl); (2) the existing 110-acre Throttle Reservoir with a storage capacity of 4,000 acre-feet at a water surface elevation of 6,783 feet msl; (3) a 500-foot-long, 80-foot-wide, 40-foot-high concrete/metal powerhouse with three 110-foot-long, 75-foot-diameter vertical shafts, each of which would house a 150-megawatt (MW) reversible pump-turbine and motor-generator, for a total generating capacity of 450 MW; (4) three alternative points of interconnection, each with its own transmission route: (a) a new 7-mile-long, 230-kilovolt (kV) transmission line connecting to the existing Walsenburg-Gladstone 230-kV transmission line; (b) a new 41-mile-long, 345-kV transmission line connecting to a substation that is planned in association with a proposed wind project and the Mora Line being developed by Ameren; or (c) a new 39-mile-long, 345-kV transmission line connecting to the Mora Substation north of Springer, which is part of the Mora Line project being developed by Ameren; and (5) appurtenant facilities.

The Closed-Loop Alternative would consist of the following facilities: (1) a new 100-acre upper reservoir with a storage capacity of 3,500 acre-feet at a water surface elevation of 7,830 feet msl; (2) a new 52-acre lower reservoir with a storage capacity of 3,500 acre-feet at a water surface elevation of 6,700 feet msl; (3) a 450-foot-long, 75-foot-wide, 40-foot-high concrete/metal powerhouse with three 100-foot-long, 70-foot-diameter vertical shafts, each of which would house a 150- MW reversible pump-turbine and motor-generator, for a total generating capacity of 450 MW; (4) three alternative points of interconnection, each with its own transmission route: (a) a new 10-mile-long, 230-kV transmission line connecting to the existing Walsenburg-Gladstone 230-kV transmission line; (b) a new 44-mile-long, 345-kV transmission line connecting to a substation that is planned in association with a proposed wind project and the Mora Line being developed by Ameren; or (c) a new 37-mile-long, 345-kV transmission line connecting to the Mora Substation north of Springer, which is part of the Mora Line project being developed by Ameren; and (5) appurtenant facilities.

Applicant Contact: Mr. Matthew Shapiro, JT Mesa Hydro, LLC, 800 W Main St., Ste. 900 Boise, ID 83702; *mshapiro@rplusenergies.com;* phone: (208) 246–9925.

FERC Contact: Everard Baker; email: *everard.baker@ferc.gov;* phone: (202) 502–8554.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members, and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov.* Comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications should be submitted within 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Secretary Kimberly Bose, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–15294–000.

More information about this project, including a copy of the application, can be viewed on the Commission's website (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number (P–15294) in the docket number field to access the document. For assistance, please contact FERC Online Support.

Dated: November 7, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–25042 Filed 11–13–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1267–132]

Greenwood County, South Carolina; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 1267–132.

c. *Date Filed:* August 11, 2023.

d. *Applicant:* Greenwood County, South Carolina.

e. *Name of Project:* Buzzards Roost Hydroelectric Project.

f. *Location:* The Buzzards Roost Hydroelectric Project is located on the Saluda River in Laurens, Newberry, and Greenwood counties, South Carolina; the proposed dock would be in Newberry County.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Julie Davis, Greenwood County, South Carolina at (864) 943–2648 or *jdavis@greenwoodsc.gov*.

i. *FERC Contact:* Shana High at (202) 502–8674 or *shana.high@ferc.gov*.

j. *Deadline for filing motions to intervene and protests:* December 6, 2023.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–1267–132. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Greenwood County, South Carolina is requesting Commission authorization to permit Fairhaven Properties, LLC to install a community dock for a proposed subdivision. The proposed dock would be in Dixon Price Cove, in Newberry County. The proposed dock would accommodate 20 boats.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

p. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: November 6, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–24990 Filed 11–13–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2023–0520; FRL–11518–01–OCSPP]

Modifications to the Safer Choice Standard and Potential Implementation of a Safer Choice Cleaning Service Certification Program; Notice of Availability, Webinar and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of and seeking public comment on a document that announces several proposed changes to EPA's Safer Choice Standard (''the Standard''), including a name change to the Safer Choice and Design for the Environment (DfE) Standard, an update to the packaging criteria, the addition of a Safer Choice certification for cleaning service providers, a provision allowing for preterm partnership termination

under exceptional circumstances, and the addition of several product and functional use class requirements. Safer Choice helps consumers, businesses, and purchasers find products that perform and contain ingredients that are safer for human health and the environment. DfE is a similar program currently used by EPA for the purpose of helping consumers and commercial buyers identify antimicrobial products that meet the health and safety standards of the normal pesticide registration process required by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as well as other EPA DfE criteria. The Agency will hold a webinar and is requesting written stakeholder comment on the proposed changes to the Standard.

DATES:

Webinar: December 19, 2023, 2–3 p.m. EST. To receive the webcast meeting link and audio teleconference information before the meeting, you must register by 5 p.m. EST on December 18, 2023.

Special Accommodations: To allow EPA time to process your request for special accommodations, please submit the request by December 12, 2023.

Written Comments: Comments must be received on or before January 16, 2024.

ADDRESSES:

Webinar: Register online at *https://abtassociates.webex.com/weblink/register/r9dc802a48d8b04aca3fbf9da33f6e603.*

Special Accommodations: Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2023–0520, through *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Melanie Adams, Safer Choice Program (7406M), Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1201 Constitution Ave. NW, Washington, DC 20004; telephone number: (202) 564–1843; email address: *adams.melanie@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be affected by this action if you participate in or apply for certification under the Safer Choice or Design for the Environment (DfE) programs and use or hope to use the programs' label or logo, respectively, on your products. Also potentially affected are consumers, institutional purchasers, retailers, and distributors of Safer Choice- or DfE-certified products who use the label or logo to identify products that have met the Agency's safer-product criteria. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Affected entities may include:

- Other Basic Inorganic Chemical Manufacturing (NAICS code 325180);
- All Other Basic Organic Chemical Manufacturing (Primary) (NAICS code 325199);
- Pesticide and Other Agricultural Chemical Manufacturing (NAICS code 325320);
- Paint and Coating Manufacturing (NAICS code 325510);
- Adhesive Manufacturing (NAICS code 325520);
- Soap and Other Detergent Manufacturing (NAICS code 325611);
- Polish and Other Sanitation Good Manufacturing (NAICS code 325612);
- Surface Active Agent Manufacturing (Primary) (NAICS code 325613);
- Toilet Preparation Manufacturing (NAICS code 325620);
- Photographic Film, Paper, Plate, and Chemical Manufacturing (NAICS code 325992);
- All Other Miscellaneous Chemical Product and Preparation Manufacturing (NAICS code 325998);
- Service Establishment Equipment and Supplies Merchant Wholesalers (Primary) (NAICS code 423850);
- Other Chemical and Allied Products Merchant Wholesalers (Primary) (NAICS code 424690);
- Supermarkets and Other Grocery (except Convenience) Stores (Primary) (NAICS code 445110);
- All Other Specialty Food Stores (NAICS code 445299);
- Pharmacies and Drug Stores (NAICS code 446110);
- Office Supplies and Stationery Stores (NAICS code 453210);
- All Other Miscellaneous Store Retailers (except Tobacco Stores) (Primary) (NAICS code 453998);
- Electronic Shopping and Mail-Order Houses (NAICS code 454110);
- Research and Development in Biotechnology (except Nanobiotechnology) (Primary) (NAICS code 541714);
- Facilities Support Services (NAICS code 561210). Janitorial Services (NAICS code 561720);
- Carpet and Upholstery Cleaning Services (NAICS code 561740);
- Elementary and Secondary Schools (NAICS code 611110);
- Colleges, Universities, and Professional Schools (NAICS code 611310);
- Promoters of Performing Arts, Sports, and Similar Events with Facilities (NAICS code 711310);
- Drycleaning and Laundry Services (NAICS code 8123);
- Civic and Social Organizations (Primary) (NAICS code 813410);
- Business Associations (Primary) (NAICS code 813910);
- Other General Government Support (NAICS code 921190); and
- Administration of Air and Water Resource and Solid Waste Management Programs (Primary) (NAICS code 924110).

B. What action is the Agency taking?

EPA is issuing a document, entitled ''Proposed Revisions to EPA's Safer Choice Standard,'' that proposes several changes to the existing Safer Choice Standard. The Agency is proposing new packaging requirements to ensure that its Standard sets a suitable and up-to-date bar for sustainable packaging and to respond to increased demand for more sustainable practices. The Agency is also proposing the creation of a Safer Choice Cleaning Service Certification for cleaning service providers that use Safer Choice-certified products for cleaning and DfE-certified products for disinfecting. EPA is proposing several additional changes, including a provision allowing for preterm partnership termination given exceptional circumstances, the addition of several product class requirements, and other changes. EPA is additionally proposing several technical changes throughout the Standard. The Agency is requesting comment on the changes that as indicated in the document entitled ''Proposed Revisions to EPA's Safer Choice Standard'' and may make further programmatic changes based on the comments received.

EPA is also announcing a stakeholder engagement opportunity through a webinar and is requesting stakeholder comment on the Standard updates. During the webinar, EPA will give a presentation on the Agency's proposed plans for updating the Standard. After the presentation, there will be time for attendees to ask questions. The Agency will respond to those questions during the webinar and asks for written submission of any comments after the webinar.

C. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.*

Do not submit Confidential Business Information (CBI) to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Multimedia submissions.*

Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system).

3. *Tips for preparing your comments.*

When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/comments.html.* Please note that once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket.

In addition, information provided in response to this request may result in further programmatic changes based on the comments received. To facilitate commenting, EPA is requesting comment on specific aspects of the changes as indicated in the document titled ''Proposed Revisions to EPA's Safer Choice Standard'' that is available in the docket. Please identify the topic you are responding to when submitting your comments. Note that you do not need to address every request for comment and may focus on those where you have relevant expertise or experience.

II. Background

A. What is the Safer Choice program?

As part of its environmental mission, the Safer Choice program partners with businesses to help consumers and commercial buyers identify products with safer chemical ingredients, without sacrificing quality or performance. The Safer Choice program certifies products containing ingredients that have met the program's specific and rigorous human health and environmental toxicological criteria. The Safer Choice program allows companies to use its label on certified products that contain safer ingredients and perform, as determined by expert evaluation. The Safer Choice program certification represents a high level of achievement in formulating products that are safer for people and the environment. For more information on the Safer Choice program, please see: *https://www.epa.gov/saferchoice.*

B. What is the DfE program?

The DfE program is a similar program currently used by EPA for the purpose of helping consumers and commercial buyers identify antimicrobial products that meet the health and safety standards of the normal pesticide registration process required by FIFRA as well as meeting the DfE certification criteria (as described in the Safer Choice Standard). For more information on the DfE program, please see: *https://www.epa.gov/pesticide-labels/learn-about-design-environment-dfe-certification.*

Authority: 15 U.S.C. 2601 *et seq.*

Dated: November 7, 2023.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2023–24988 Filed 11–13–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1080; FR ID 184413]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before December 14, 2023.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *https://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1080.

Title: Collections for the Prevention or Elimination of Interference and for the Reconfiguration of the 800 MHz Band.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and/or State, local or tribal governments.

Number of Respondents and Responses: 58 respondents; 2,956 responses.

Estimated Time per Response: 0.5–10 hours (4.5 hours average).

Frequency of Response: On occasion reporting requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154, 160, 251–254, 303, and 332.

Total Annual Burden: 9,507 hours.

Total Annual Cost: No Cost.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management Budget (OMB) after this 60-day comment period in order to obtain the full three year clearance from them. The information sought assists 800 MHz licensees in preventing or resolving interference and enable the Commission to implement its rebanding program. Under that program, certain licensees are being relocated to new frequencies in the 800 MHz band, with all rebanding costs paid by T-Mobile. The Commission's overarching objective in this proceeding is to eliminate interference to public safety communications. As demonstrated in the Commission's 2020 Report and Order in this rulemaking proceeding (FCC 20–61), the Commission is actively accelerating the conclusion of the 800 MHz rebanding program.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–25041 Filed 11–13–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Open Meeting of the FDIC Systemic Resolution Advisory Committee

AGENCY: Federal Deposit Insurance Corporation.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Systemic Resolution Advisory Committee. The Advisory Committee will provide advice and recommendations on a broad range of policy issues regarding the resolution of systemically important financial companies. The meeting is open to the public. The public's means to observe this meeting of the FDIC Systemic Resolution Advisory Committee will be both in-person and via a Webcast live on the internet. In addition, the meeting will be recorded and subsequently made available on-demand approximately two weeks after the event. To view the live event, visit *http://fdic.windrosemedia.com.*

DATES: Tuesday, December 5, 2023, from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held in the FDIC Cafeteria on the seventh floor of the FDIC Building located at 550 17th Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Requests for further information concerning the meeting may be directed to Ms. Debra A. Decker, Committee Management Officer of the FDIC, at (202) 898–8748.

SUPPLEMENTARY INFORMATION:

Agenda: The agenda will include a discussion of a range of issues and developments related to the resolution of systemically important financial companies. The agenda may be subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of Meeting: The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. Observers requiring auxiliary aids (*e.g.,* sign language interpretation) for this meeting should email *DisabilityProgram@fdic.gov* to make necessary arrangements. This meeting of the FDIC Systemic Resolution Advisory Committee will also be Webcast live via the internet *http://fdic.windrosemedia.com.* For optimal viewing, a high-speed internet connection is recommended. To view the recording, visit *http://fdic.windrosemedia.com/index.php?category=Systemic+Resolution+Advisory+Committee.* Written statements may be filed with the Advisory Committee before or after the meeting.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on November 8, 2023.

James Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–25037 Filed 11–13–23; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Thursday, November 16, 2023, at 10:30 a.m.

PLACE: Hybrid meeting: 1050 First Street NE, Washington, DC (12TH floor) and virtual.

Note: For those attending the meeting in person, current COVID–19 safety protocols for visitors, which are based on the CDC COVID–19 hospital admission level in Washington, DC, will be updated on the Commission's contact page by the Monday before the meeting. See the contact page at *https://www.fec.gov/contact/.* If you would like to virtually access the meeting, see the instructions below.

STATUS: This meeting will be open to the public, subject to the above-referenced guidance regarding the COVID–19 hospital admission level and corresponding health and safety procedures. To access the meeting virtually, go to the Commission's website *www.fec.gov* and click on the banner to be taken to the meeting page.

MATTERS TO BE CONSIDERED:

Audit Division Recommendation Memorandum on the Oklahoma Leadership Council (A21–07)

Proposed Final Audit Report on Citizens for Waters (A21–01)

Draft Advisory Opinion 2023–07: Upshur County Republican Executive Committee
Management and Administrative Matters

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer; Telephone: (202) 694–1220.

Individuals who plan to attend in person and who require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Laura E. Sinram, Secretary and Clerk, at (202) 694–1040 or *secretary@fec.gov,* at least 72 hours prior to the meeting date.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Laura E. Sinram,

Secretary and Clerk of the Commission

[FR Doc. 2023–25152 Filed 11–9–23; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Board Public Website Usability Surveys (FR 3076; OMB No. 7100–0366).

DATES: Comments must be submitted on or before January 16, 2024.

ADDRESSES: You may submit comments, identified by FR 3076, by any of the following methods:

- *Agency website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Collection title: Board Public Website Usability Surveys.

Collection identifier: FR 3076.

OMB control number: 7100–0366.

General description of collection: The Board uses the ad hoc FR 3076 to seek input (1) from users or potential users of the Board's public website and social media tools, (2) about the Board's outreach, and (3) about other communication tools used by Board. The FR 3076 is offered to a diverse audience of individuals including consumers, bankers, media, government employees, educators, and others. Responses to the FR 3076 are used to help improve the usability and offerings on the Board's public website and other online public communications. The FR 3076 comprises two parts: surveys and focus groups. The frequency of the surveys and content of the questions varies as needs arise for feedback on different Board resources and from different audiences. The FR 3076 surveys may be conducted up to 12 times per year. In addition, the Board plans to conduct up to four focus group sessions per year.

Frequency: As needed.

Respondents: Individual users and potential users of the Board's public website.

Total estimated number of respondents: 120.

Total estimated annual burden hours: 420.[1]

Board of Governors of the Federal Reserve System, November 7, 2023.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–25096 Filed 11–13–23; 8:45 am]

BILLING CODE 6210–01–P

[1] More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review.* On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR 3076.

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Domestic Finance Company Report of Consolidated Assets and Liabilities (FR 2248; OMB No. 7100–0005).

DATES: Comments must be submitted on or before January 16, 2024.

ADDRESSES: You may submit comments, identified by FR 2248, by any of the following methods:

- *Agency website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Collection title: Domestic Finance Company Report of Consolidated Assets and Liabilities.

Collection identifier: FR 2248.

OMB control number: 7100–0005.

General description of collection: The voluntary FR 2248 is collected monthly as of the last calendar day of the month from a stratified sample of finance companies.[1] Each monthly report collects balance sheet data on major categories of consumer and business credit receivables and on major short-term liabilities. For quarter-end months, additional asset and liability items are collected to provide a full balance sheet.

[1] Finance companies include companies in which 50 percent or more of assets are held in any of the following types of loan or lease assets: (1) liens on real estate, defined as outstanding balances on loans or leases, for any purpose, secured by liens on real estate and (2) loans and leases not secured by real estate, such as business loans and leases, defined as outstanding balances on loans and on leases for commercial and industrial purposes to sole proprietorships, partnerships, corporations, and other business enterprises; or consumer loans and leases, defined as outstanding balances on loans and on leases for household, family, and other personal expenditures.

A supplemental section collects data on securitized assets. Board staff may ask either quantitative or qualitative questions through the use of a special addendum section no more than twice per year. The data are used to construct universe estimates of finance company holdings, which are published in the monthly statistical releases Finance Companies (G.20) and Consumer Credit (G.19), and in the quarterly statistical release Financial Accounts of the United States (Z.1).

Frequency: Monthly.

Respondents: Sample of 150 finance companies.

Total estimated number of respondents: 150.

Total estimated annual burden hours: 750.[2]

Board of Governors of the Federal Reserve System, November 7, 2023.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–25093 Filed 11–13–23; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Government-Administered, General-Use Prepaid Card Survey (FR 3063; OMB No. 7100–0343).

DATES: Comments must be submitted on or before January 16, 2024.

ADDRESSES: You may submit comments, identified by FR 3063, by any of the following methods:

• *Agency website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*

• *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.

• *FAX:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority to Extend for Three Years, Without Revision, the Following Information Collection

Collection title: Government-Administered, General-Use Prepaid Card Survey.

Collection identifier: FR 3063.

OMB control number: 7100–0343.

General description of collection: The FR 3063 survey collects data from issuers of government-administered, general-use prepaid cards, including information on the prepaid card program, the number of cards outstanding, card funding, purchase transactions, interchange fees, and cardholder fees. The FR 3063 survey is mandatory. The Board uses data from the FR 3063 survey to support an annual report to Congress on the prevalence of use of general-use prepaid cards in

[2] More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review.* On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR 2248.

federal, state, and local government-administered payment programs and on the interchange and cardholder fees charged with respect to such use of such cards.

Frequency: Annually.

Respondents: Issuers of government-administered, general-use prepaid cards.

Total estimated number of respondents: 22.

Total estimated annual burden hours: 220.[1]

Board of Governors of the Federal Reserve System, November 7, 2023.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–25095 Filed 11–13–23; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Senior Loan Officer Opinion Survey on Bank Lending Practices (FR 2018; OMB No. 7100–0058).

DATES: Comments must be submitted on or before January 16, 2024.

ADDRESSES: You may submit comments, identified by FR 2018, by any of the following methods:

- *Agency website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Collection title: Senior Loan Officer Opinion Survey on Bank Lending Practices.

Collection identifier: FR 2018.

OMB control number: 7100–0058.

General description of collection: A senior loan officer at each respondent bank completes this voluntary survey through an electronic submission up to six times a year. Senior staff at the Reserve Banks with knowledge of bank lending practices serve as the main contacts for the survey respondents in their district and help administer the survey. The current reporting panel consists of up to 80 large domestically chartered commercial banks and up to 24 large U.S. branches and agencies of foreign banks. The purpose of the survey is to provide qualitative and limited quantitative information on credit availability and demand, as well as on evolving developments and lending practices in the U.S. loan markets. A portion of each survey

[1] More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review.* On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR 3063.

typically covers special topics of timely interest.

Frequency: Quarterly.

Respondents: Domestically chartered commercial banks and U.S. branches and agencies of foreign banks. Other types of respondents (such as other depository institutions, bank holding companies, or other financial entities) may also be surveyed if appropriate.

*Total estimated number of respondents:*104.

Total estimated annual burden hours: 1,248. [1]

Board of Governors of the Federal Reserve System, November 7, 2023.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–25092 Filed 11–13–23; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Quarterly Report of Interest Rates on Selected Direct Consumer Installment Loans and the Quarterly Report of Credit Card Plans (FR 2835 and FR 2835a; OMB No. 7100–0085).

DATES: Comments must be submitted on or before January 16, 2024.

ADDRESSES: You may submit comments, identified by FR 2835 and FR 2835a, by any of the following methods:

• *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*

• *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.

• *FAX:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Collection title: Quarterly Report of Interest Rates on Selected Direct Consumer Installment Loans and the Quarterly Report of Credit Card Plans.

Collection identifier: FR 2835 and FR 2835a.

OMB control number: 7100–0085.

General description of collection: The FR 2835 collects information on interest rates on loans for new vehicles and loans for other consumer goods and personal expenses from a sample of commercial banks. The FR 2835a collects information on interest rates, finance charges, and loan balances for credit card accounts from a sample of commercial banks. The data from these reports help the Board analyze current household financial conditions and the implications of these conditions for household spending and, as such, these data provide valuable input to the monetary policymaking process. The

[1] More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review.* On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR 2018.

data are also used to create aggregate statistics on consumer loan terms that are published in the Federal Reserve's monthly statistical releases, G.19 Consumer Credit and G.20 Finance Companies, and in the Federal Reserve Bulletin. Some of the aggregates are used by the Board in the calculation of the aggregate household debt service and financial obligations ratios for the Federal Reserve's quarterly Household Debt Service and Financial Obligations Ratios statistical release and by the Bureau of Economic Analysis to calculate interest paid by households as part of the National Income and Product Accounts.

Frequency: Quarterly.

Respondents: The FR 2835 panel comprises a sample of commercial banks. The FR 2835a panel comprises a sample of commercial banks with $1 billion or more in credit card receivables and a representative group of smaller issuers.

Total estimated number of respondents: 200.

Total estimated annual burden hours: 274.[1]

Board of Governors of the Federal Reserve System, November 7, 2023.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–25094 Filed 11–13–23; 8:45 am]

BILLING CODE 6210–01–P

FINANCIAL STABILITY OVERSIGHT COUNCIL

Analytic Framework for Financial Stability Risk Identification, Assessment, and Response

AGENCY: Financial Stability Oversight Council.

ACTION: Publication of analytic framework.

SUMMARY: The Financial Stability Oversight Council (Council) is publishing an analytic framework that describes the approach the Council expects to take in identifying, assessing, and responding to certain potential risks to U.S. financial stability.

DATES: *Effective Date:* November 14, 2023.

FOR FURTHER INFORMATION CONTACT: Eric Froman, Office of the General Counsel, Treasury, at (202) 622–1942; Devin Mauney, Office of the General Counsel, Treasury, at (202) 622–2537; or Priya Agarwal, Office of the General Counsel, Treasury, at (202) 622–3773.

SUPPLEMENTARY INFORMATION:

I. Background

Section 111 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) established the Financial Stability Oversight Council (the Council).[1] The statutory purposes of the Council are ''(A) to identify risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace; (B) to promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure; and (C) to respond to emerging threats to the stability of the United States financial system.'' [2]

The Council's duties under section 112 of the Dodd-Frank Act reflect the range of approaches the Council may consider to identify, assess, and respond to potential threats to U.S. financial stability, which include collecting information from regulators, requesting data and analyses from the Office of Financial Research (the OFR), monitoring the financial services marketplace and financial regulatory developments, facilitating information sharing and coordination among regulators, recommending to the Council member agencies general supervisory priorities and principles, identifying regulatory gaps, making recommendations to the Board of Governors of the Federal Reserve System (the Federal Reserve) or other primary financial regulatory agencies,[3] and designating certain entities or payment, clearing, and settlement activities for additional regulation.

The Council's Analytic Framework for Financial Stability Risk Identification, Assessment, and Response (the Analytic Framework) describes the approach the Council expects to take in identifying, assessing, and responding to certain potential risks to U.S. financial stability. The Analytic Framework is intended to help market participants, stakeholders, and other members of the public better understand how the Council expects to perform certain of its duties. It is not a binding rule and does not establish rights or obligations applicable to any person or entity.

The Council issued for public comment the Proposed Analytic Framework for Financial Stability Risk Identification, Assessment, and Response (the Proposed Framework) on April 21, 2023.[4] The comment period was initially set to close after 60 days; however, in response to public requests for additional time to review and comment on the Proposed Framework, the Council extended the comment period by 30 days,[5] to July 27, 2023. Having carefully considered the comments it received, the Council voted to adopt the Analytic Framework at a public meeting on November 3, 2023.

At the same time as the publication of the Proposed Framework, the Council also published proposed interpretive guidance (the Proposed Guidance) regarding its procedures for designating nonbank financial companies for prudential standards and Federal Reserve supervision under section 113 of the Dodd-Frank Act. At its public meeting on November 3, 2023, the Council also adopted a final version of those procedures (the Final Guidance).

In response to its request for public input, the Council received 37 comments on the Proposed Framework, of which nine were from companies or trade associations in the investment management industry, two were from trade associations in the insurance industry, six were from other companies or trade associations, 10 were from various advocacy groups, five were from current or former state or federal government officials, two were from groups of academics, and three were from individuals.[6] Most public comments submitted with respect to the Proposed Framework also commented

[1] More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review.* On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifiers, FR 2835 and FR 2835a.

[1] Dodd-Frank Act section 111, 12 U.S.C. 5321.

[2] Dodd-Frank Act section 112(a)(1), 12 U.S.C. 5322(a)(1).

[3] ''Primary financial regulatory agency'' is defined in section 2(12) of the Dodd-Frank Act, 12 U.S.C. 5301(12).

[4] 88 FR 26305 (Apr. 28, 2023). In a rule codified at 12 CFR 1310.3, the Council voluntarily committed that it would not amend or rescind certain guidance regarding nonbank financial company determinations set forth in Appendix A to 12 CFR part 1310 without providing the public with notice and an opportunity to comment in accordance with the procedures applicable to legislative rules under 5 U.S.C. 553. Section 1310.3 does not apply to the Council's issuance of rules, guidance, procedures, or other documents that do not amend or rescind Appendix A, and accordingly, it does not apply to the Analytic Framework. Nonetheless, in the interest of transparency and accountability, the Council chose to publish the Proposed Framework and provide an opportunity for public comment.

[5] 88 FR 41616 (June 27, 2023).

[6] The comment letters are available at *https://www.regulations.gov/docket/FSOC-2023-0001.*

on the Proposed Guidance. For the convenience of the public, the Council addresses many of the issues raised in such dual comments in the preamble to the Final Guidance.

II. Adoption of the Analytic Framework Following Public Comment

The Analytic Framework provides a narrative description of the approach the Council expects to take in identifying, assessing, and responding to certain potential risks to U.S. financial stability. Accordingly, this preamble omits a duplicative description of the Analytic Framework's content and instead focuses on key changes from the Proposed Framework and on comments received in response to the Proposed Framework. Members of the public should refer directly to the Analytic Framework for greater detail regarding the Council's approach.

A. Key Changes From the Proposed Framework

Following consideration of public comments on the Proposed Framework, the Analytic Framework reflects several key changes from the Proposed Framework, each as discussed further below:

- *Description of ''threat to financial stability.''* To provide additional transparency regarding how the Council expects to interpret the phrase ''threat to the financial stability of the United States,'' which is used in several instances in the Dodd-Frank Act related to the Council's authorities, the Analytic Framework includes an interpretation of this term that is based on the interpretation of ''financial stability'' that was included in the Proposed Framework.
- *Additional sample metrics to assess vulnerabilities.* To provide more public transparency on the Analytic Framework's description of how the Council assesses vulnerabilities that contribute to risks to financial stability, the Council has added more examples of the types of quantitative metrics it may consider in its analyses.
- *Expanded discussion of transmission channels.* To further clarify the Council's consideration of the channels that it has identified as being most likely to transmit risk through the financial system, the Analytic Framework now identifies vulnerabilities that may be particularly relevant to each of four listed transmission channels and includes more detailed discussions of examples and analyses relevant to the transmission channels.
- *Emphasis on the Council's engagement with regulators.* To align more closely with the Council's practice and expectations, the Analytic Framework includes additional emphasis on the Council's extensive engagement with state and federal financial regulatory agencies regarding potential risks and the extent to which existing regulation may mitigate those risks.

B. Consideration of Public Comments

The Analytic Framework, like the Proposed Framework, describes the approach the Council expects to take to identify, assess, and respond to potential risks to U.S. financial stability and contains three substantive subsections addressing these steps.

Approximately half of the comments on the Proposed Framework were generally supportive, noting that the Proposed Framework's eight listed vulnerabilities, associated sample metrics, and four transmission channels were well chosen, were supported by expert research and analysis, and provide appropriate transparency. A number of commenters were supportive of the Council's proposal to issue the Analytic Framework as a stand-alone document separate from procedures applicable to specific authorities such as nonbank financial company designation under section 113 of the Dodd-Frank Act.

Other commenters were generally critical of the Proposed Framework, stating that its listed vulnerabilities and transmission channels, as well as the interpretation of financial stability, were overly broad or unclear. Several commenters stated that the Proposed Framework did not adequately describe how the Council intended to use the listed vulnerabilities, sample metrics, and transmission channels to assess nonbank financial companies, activities, or risks. Some commenters also noted that the 10 considerations that the Council is required to take into account in a nonbank financial company designation under section 113 of the Dodd-Frank Act differ from the Proposed Framework's listed vulnerabilities.

The Council appreciates and has considered the public comments as described below, organized by the relevant section of the Analytic Framework.

1. Introduction

The Analytic Framework's introduction generally describes the Council's statutory purposes and duties, explains the Analytic Framework's role and purpose, and provides background information relevant to the sections that follow. This section of the Proposed Framework included an interpretation of ''financial stability'' but did not separately provide an interpretation of a ''threat'' to financial stability. Public comments addressing the Proposed Framework's introduction section focused on this element.

The Analytic Framework interprets ''financial stability'' as ''the financial system being resilient to events or conditions that could impair its ability to support economic activity, such as by intermediating financial transactions, facilitating payments, allocating resources, and managing risks.'' Some commenters were supportive of the Proposed Framework's interpretation of financial stability, stating that it appropriately accounts for key ways in which the financial system supports economic activity and that it encourages financial regulators to take action before events or conditions undermine financial stability. Some commenters stated that the Analytic Framework (or the Final Guidance)[7] should include the Council's interpretation of the phrase ''threat to the financial stability of the United States,'' which is an element of the standard for designating nonbank financial companies for prudential standards and Federal Reserve supervision under section 113 of the Dodd-Frank Act, and which (or close variations of which) are also used elsewhere in the Dodd-Frank Act related to the Council's other authorities.[8] Some of these commenters stated that the Proposed Framework's interpretation of ''financial stability,'' read in isolation, implied that even insubstantial impairments to the financial system's ability to support economic activity could constitute threats to financial stability. One commenter suggested adopting specific contrasting definitions of financial instability and financial stability.

The Council continues to support the interpretation of ''financial stability'' as proposed, which accurately captures generally accepted aspects of this concept. However, the Council recognizes that the ''financial stability'' interpretation does not include an indicator of significance, which may be important in cases where the Council is considering that term in connection with a potential exercise of one or more of its authorities. Therefore, in response

[7] The preamble to the Final Guidance contains a discussion of the Council's reasons for removing a previous interpretation of ''threat to the financial stability of the United States'' from its nonbank financial company designation procedures and not including an interpretation of that phrase in the Final Guidance.

[8] See Dodd-Frank Act sections 112 and 120, 12 U.S.C. 5322 and 5330.

to public comments, the Analytic Framework includes an interpretation of ''threat to financial stability'' that builds on the proposed interpretation of ''financial stability.'' Specifically, the Analytic Framework interprets ''threat to financial stability'' to mean events or conditions that could ''substantially impair'' the financial system's ability to support economic activity. This interpretation is consistent with the view of commenters who recommended that ''threat to financial stability'' should be interpreted consistently with the Council's statutory purposes and duties, which direct it to respond to potential and emerging, not just entrenched or imminent, threats to financial stability.[9]

2. Identifying Potential Risks

Section II.a of the Analytic Framework, like the Proposed Framework, describes how the Council expects to identify potential risks to financial stability and provides examples of the broad range of asset classes, institutions, and activities that the Council monitors for potential risks.

A number of commenters expressed their support for the Proposed Framework's discussion of risk monitoring, noting that the Proposed Framework is broad enough to cover a variety of events and conditions that may pose risks to the financial stability of the United States. Other commenters stated that the activities, products, and practices listed in the Proposed Framework were overly broad or overlapping and suggested changes to this section, including the incorporation of certain aspects of the Council's guidance on nonbank financial company designations issued in 2019, more detail on how risk identification will be connected to the list of vulnerabilities in the Proposed Framework, and additional sector-specific information. One commenter suggested specifically describing how the asset classes, institutions, and activities listed in the Proposed Framework relate to the identification of risk in the asset management industry. Additional commenters suggested that this section of the Analytic Framework should address in greater detail certain climate-related financial risks or risks to the credit needs of underserved communities.[10]

The Council's statutory mission is broad: It encompasses risks to financial stability irrespective of the source of the risk or the specific sector of the financial system that could be affected. Therefore, the Council's monitoring is similarly broad, and in response to comments suggesting the addition of further examples, the Council has added ''private funds'' to its list of financial entities in this section. The list of asset classes, institutions, and activities in the Analytic Framework is not intended to be exclusive or exhaustive, but instead to reflect the Council's broad statutory mandate. As discussed in section II.B.5 below, the purpose of the Analytic Framework is to describe the Council's overarching approach to financial stability risks, so sector-specific discussion would not provide useful clarity. The Council encourages members of the public who are interested in the Council's specific areas of focus to review the Council's regular public statements, including its annual reports, public meeting minutes, and other public reports, which describe in detail the Council's analyses of various risks.

3. Assessing Potential Risks

The Analytic Framework describes how the Council expects to evaluate potential risks to financial stability to determine whether they merit further review or action. Section II.b of the Analytic Framework sets forth a non-exhaustive and non-exclusive list of vulnerabilities that most commonly contribute to risks to financial stability and sample quantitative metrics that may be used to measure these vulnerabilities.

(a) Vulnerabilities and Sample Metrics

The Council received a variety of feedback on the vulnerabilities and sample metrics described in Section II.b of the Proposed Framework. Some commenters supported the specified vulnerabilities and sample metrics, stating that they were well chosen, were supported by expert research and analysis, and provided appropriate transparency. One commenter supported the inclusion of the ''interconnections'' and ''destabilizing activities'' vulnerabilities, noting that these vulnerabilities can arise even when the underlying activities are undertaken intentionally and permitted by law. Some commenters also supported the descriptions of the vulnerabilities in the Proposed Framework. Several commenters noted that the Proposed Framework offered the Council flexibility to conduct analyses of financial sectors and their interconnections as well as more focused assessments of risks related to individual firms. Some commenters commended the Council for issuing the Proposed Framework separately from the Proposed Guidance, as this approach allows the Council to decide which authority to exercise, if any, without committing itself in advance to a particular response.

Other commenters stated that the listed vulnerabilities were vague or did not clarify the language of the Dodd-Frank Act. The Council believes that by describing the Council's analytic approach without regard to the origin of a particular risk, the Analytic Framework provides new public transparency into how the Council expects to consider risks to financial stability. Several commenters addressed whether issuing the Proposed Framework separately from the Proposed Guidance was useful. The Council believes that separately issuing the Analytic Framework and the Final Guidance provides more clarity because they serve different purposes. The Final Guidance describes the Council's procedures related only to nonbank financial company designations, while the Analytic Framework explains how the Council analyzes risks to financial stability across the range of risks that arise and the authorities the Council may use to respond to those risks.

Several commenters recommended that the Analytic Framework establish specific thresholds at which vulnerabilities would be deemed to rise to the level of a threat to financial stability. One commenter suggested that the Analytic Framework include examples of how vulnerabilities will be assessed individually and in combination with each other. Other commenters proposed that the Council provide a sliding scale with minimum quantitative thresholds, where an assessment that results in a score closer to the minimum threshold would require a more rigorous qualitative assessment to determine whether a risk to U.S. financial stability exists than a higher score would. In contrast, some commenters expressed concern with the use of metrics generally to assess vulnerabilities, because systemic risk analysis methods rapidly evolve and specified metrics may become obsolete. One commenter suggested omitting the sample metrics and instead expanding the descriptions of the vulnerabilities in other ways. Some commenters stated that that the metrics in the Proposed Framework were tailored to banks and not appropriate for nonbank financial companies.

The Council believes that the vulnerabilities and sample metrics in the Analytic Framework provide transparency regarding how the Council

[9] See Dodd-Frank Act section 112(a), 12 U.S.C. 5322(a).

[10] These comments are discussed further in section II.B.5 below.

assesses risks to financial stability across a range of issues and sectors. As described in the Analytic Framework, the Council routinely uses quantitative metrics and other data in its analyses, in addition to qualitative factors. Further, in some circumstances, such as evaluations of risks within a specific financial sector, the application of particular metrics, tailored to the relevant sector and to the risks under evaluation, can be beneficial. Accordingly, the Analytic Framework describes risk factors and sample quantitative metrics. However, the Council does not believe that uniform thresholds, ''sliding scales,'' or other weighting schemes adequately capture the wide range of potential risks to financial stability that can arise across the financial system. As some commenters noted, financial risks vary across sectors, and thresholds that provide helpful insight into risks in one sector may be irrelevant to another sector. While it would not be feasible to generate an exhaustive list of metrics to measure the full range of potential financial stability risks, the Council believes that the sample metrics in the Analytic Framework offer helpful clarity to understanding the listed vulnerabilities. Therefore, the Analytic Framework sets forth sample metrics and does not provide the types of thresholds suggested by some commenters.

Some commenters raised issues regarding specific vulnerabilities addressed in the Proposed Framework. One commenter expressed concern that the ''operational risks'' vulnerability would capture risks associated with commercial companies. Another commenter questioned how the Council would determine that vulnerabilities were not related to normal market fluctuations. The Council is mindful of its purpose ''to respond to emerging threats to the stability of the United States financial system,'' and the vulnerabilities described in the Analytic Framework are intended to support the identification and assessment of potential risks to financial stability.

Some commenters were critical of the ''destabilizing activities'' vulnerability. Several commenters stated that this vulnerability was circular or conclusory. Other commenters recommended that the Council clarify this vulnerability. One commenter suggested that this vulnerability would be measured better by qualitative factors rather than quantitative measures. The Analytic Framework provides examples of ''destabilizing activities''—trading practices that substantially increase volatility in one or more financial markets, or activities that involve moral hazard or conflicts of interest that result in the creation and transmission of significant risks—to provide insight into this vulnerability. As with other vulnerabilities, the Council expects its assessment of risks arising from destabilizing activities to be rigorous and analytical.

One commenter stated that the ''liquidity risk and maturity mismatch'' vulnerability did not explain how the mismatch between short-term liabilities and longer-term assets is relevant for different types of nonbank financial companies. While the Analytic Framework is not focused on the assessment of individual nonbank financial companies or sectors, the Council has further clarified this vulnerability by including two additional sample metrics: the scale of financial obligations that are short-term or can become due in a short period, and amounts of transactions that may require the posting of additional margin or collateral.

Some commenters stated that the Council should provide more detail on how it considers other vulnerabilities listed in the Analytic Framework. In response, the Analytic Framework includes additional examples of the types of metrics the Council may consider with respect to complexity or opacity (the extent of intercompany or interaffiliate dependencies for liquidity, funding, operations, and risk management) and inadequate risk management (levels of exposures to particular types of financial instruments or asset classes).

One commenter stated that the sample metrics may incentivize firms to manage their operations with respect to the metrics rather than mitigating risk. To the extent that the vulnerabilities, sample metrics, and transmission channels in the Analytic Framework provide insights that enable firms or other stakeholders to take action to mitigate potential risks to financial stability, those steps could help accomplish the Council's statutory purposes of identifying risks to financial stability, promoting market discipline, and responding to emerging threats to financial stability.

A number of commenters suggested additional metrics for inclusion in the Analytic Framework. For example, several commenters suggested additional sample metrics for the ''operational risks'' vulnerability. The sample metrics included in the Analytic Framework are quantitative only, to provide further clarity as a supplement to the qualitative descriptions of the listed vulnerabilities. Some of the metrics recommended by commenters were not quantitative in nature and are not suitable for inclusion in the Analytic Framework. Other recommended metrics are not included because they would not be broadly applicable across the financial system. One commenter recommended that the Analytic Framework include a ''metric'' for existing regulatory frameworks. One commenter suggested adding specific mitigating factors as metrics. Both the Proposed Framework and the Analytic Framework note explicitly that the Council takes into account existing laws and regulations that have mitigated a potential risk to U.S. financial stability. Additionally, as the Proposed Framework noted, the sample metrics provided are indicative of how the Council expects to consider the vulnerabilities but are not meant to be an exhaustive or exclusive list of factors. While the Council expects to consider factors that are likely to mitigate potential risks to financial stability, it does not believe the inclusion of potential mitigants would enhance the Analytic Framework. To the extent that mitigating factors exist, they are reflected in the analysis of the risk itself, because they reduce vulnerabilities or the transmission of risks.

Some commenters addressed the relationship between the vulnerabilities and sample metrics in the Proposed Framework, on one hand, and the statutory standard or considerations for designating nonbank financial companies under section 113 of the Dodd-Frank Act, on the other hand. As noted above, the Analytic Framework describes the Council's analytic approach without regard to the origin of a particular risk, including whether the risk arises from widely conducted activities or from individual entities, and regardless of which of the Council's authorities may be used to respond to the risk. With respect to nonbank financial company designations, the Dodd-Frank Act sets forth the standard for designations and certain specific considerations that the Council must take into account in making any determination under section 113. Consistent with the statutory requirements, the Council will apply the statutory standard and each of the 10 statutory considerations in any evaluation of a nonbank financial company for potential designation. The vulnerabilities, sample metrics, and transmission channels described in the Analytic Framework will inform the Council's assessment of the designation standard and mandatory considerations under section 113. Some commenters also addressed whether the vulnerabilities, sample metrics, or transmission channels in the Analytic Framework take into account the likelihood of a nonbank financial company's material financial distress (referred to by some commenters as a company's ''vulnerability'' to financial distress), including in the context of a designation under section 113 of the Dodd-Frank Act. As also discussed in the preamble to the Final Guidance, the Council does not intend to construe any of the vulnerabilities, sample metrics, transmission channels, or other factors described in the Analytic Framework as contemplating or requiring an assessment of the likelihood of, or vulnerability to, material financial distress, including in the context of a potential designation under section 113 of the Dodd-Frank Act.

(b) Transmission Channels

The Analytic Framework includes a detailed discussion, expanded from the Proposed Framework, regarding the Council's consideration of how the adverse effects of potential risks could be transmitted to financial markets or market participants and what impact the potential risks could have on the financial system. The Analytic Framework notes that such a transmission of risk can occur through various mechanisms, or channels, and describes four transmission channels that the Council has identified as most likely to facilitate the transmission of the negative effects of a risk to financial stability.

Some commenters stated that the Proposed Framework's discussion of the four transmission channels provided insufficient detail to elucidate the Council's analyses. For example, one commenter suggested adding a discussion that would map specific activities, products, and practices that may pose risks onto each of the identified transmission channels. Another commenter stated that the Council should specify the value of daily losses or asset sales that would give rise to a threat to financial stability. Other commenters stated that the relationship between the transmission channels and the vulnerabilities described above was unclear. Some commenters suggested adding more analyses or requirements to the Council's consideration of the transmission channels, including to address how the transmission channels may spread risks to low-income, minority, or underserved communities; to mandate that the Council focus on some channels more than others; or to notify market participants when the transmission of risks becomes serious enough to pose a potential threat to financial stability.

One commenter stated that the transmission channels do not relate to specific Council authorities under the Dodd-Frank Act and are therefore inappropriate for the Council to consider. However, under section 112 of the Dodd-Frank Act, one of the Council's purposes is ''to respond to emerging threats to the stability of the United States financial system,'' and among the Council's relevant duties is to ''monitor the financial services marketplace in order to identify potential threats to the financial stability of the United States.'' Accordingly, consideration of the channels most likely to transmit risk through the financial system is well within the Council's remit.

In response to the public comments, the Analytic Framework contains two types of additional information with respect to the transmission channels. First, to clarify the relationship between the vulnerabilities and the transmission channels described in the Analytic Framework, each of the four transmission channel discussions now highlights certain vulnerabilities that may be particularly relevant to that channel. These explanations are intended to further clarify, for the public, how the vulnerabilities and transmission channels will be considered together. Second, the Analytic Framework includes expanded discussions of the transmission channels, compared to the Proposed Framework, to provide further insight into the Council's analyses under those channels. The ''exposures'' transmission channel discussion now includes additional examples of potentially relevant asset classes. Consistent with input from a number of commenters, the Analytic Framework also notes that risks arising from exposures to assets managed by a company on behalf of third parties are distinct from exposures to assets owned by, or liabilities issued by, the company itself. The discussion of the ''asset liquidation'' transmission channel now provides greater detail on the features of certain assets, liabilities, and market behavior that could affect the Council's analysis and further describes how actions by market participants or financial regulators may influence the transmission of risks through asset liquidation. Finally, the Analytic Framework's discussion of the ''critical function or service'' transmission channel further elaborates on the Council's analysis with respect to this channel.

The Council recognizes that some commenters recommended that even further detail be included in the transmission channel discussion. The Council believes that this discussion in the Analytic Framework, including the additional descriptions compared to the proposal, provides the public with insight into the Council's assessments of potential risks to financial stability, while maintaining the flexibility needed for the Council to be able to respond to diverse and evolving risks.

4. Addressing Potential Risks

Section II.c of the Analytic Framework describes approaches the Council may take to respond to risks and multiple tools the Council may use to mitigate risks. As described in the Analytic Framework, these approaches may include interagency information sharing and collaboration, recommendations to agencies and Congress, and designation of certain entities or activities for supervision and regulation.

Some commenters suggested that the Council should add further detail to the Analytic Framework regarding how the Council intends to use the tools described in this section. However, the Analytic Framework is designed to describe how the Council evaluates and responds to potential risks to financial stability in general, rather than a process for using any specific authority. The Council has issued separate documents, such as the Final Guidance, that describe in detail the procedures the Council expects to follow when employing certain statutory authorities.

Several commenters stated that the Analytic Framework should include a more detailed description of how the Council will collaborate with primary financial regulatory agencies to respond to risks to U.S. financial stability. Others stated that the framework should address how the Council considers the existing regulations that primary financial regulatory agencies administer and require that the Council only act when existing regulation is insufficient.

The Council has a long history of close engagement with financial regulatory agencies and intends to continue to consult and coordinate with regulators. The Proposed Framework referred numerous times to the Council's consultation and coordination with primary financial regulatory agencies, and noted that the Council works with relevant financial regulators at the federal and state levels. The Proposed Framework also noted that if existing regulators can address a risk to financial stability in a sufficient and timely way, the Council generally encourages those regulators to do so. The Council routinely works with federal and state financial regulatory agencies to identify, assess, and respond to risks to financial stability, as noted in the Proposed Framework's section on addressing potential risks. In response to the public comments, the Analytic Framework further emphasizes the importance of the Council's engagement with state and federal financial regulators as it assesses potential risks. The Analytic Framework now includes an additional statement that the Council engages extensively with state and federal financial regulatory agencies, including those represented on the Council, regarding potential risks and the extent to which existing regulation may mitigate those risks.

One commenter suggested that the Council clarify that the emphasis on engaging with existing regulators to address risks to financial stability does not require the Council to prioritize interagency coordination and information sharing over its other authorities, including under sections 113 and 120 of the Dodd-Frank Act. The Council agrees that such engagement does not imply, much less require, prioritization of any of the Council's authorities over others. The Council intends for all of its statutory tools to be available, as appropriate, to respond to risks to financial stability.

5. Other Comments

In addition to comments regarding specific sections of the Proposed Framework, the Council also received a number of more general or cross-cutting comments. Several commenters stated that the Analytic Framework should specifically address unique features of their industries, including traditional asset managers, alternative investment managers, life insurers, and payment and digital asset providers. The Council affirms that its analyses of potential risks to financial stability will account for relevant differences among various financial sectors. For example, as noted in the Analytic Framework, under the exposures transmission channel, risks arising from exposures to assets managed by a company on behalf of third parties are distinct from exposures to assets owned by, or liabilities issued by, the company itself. The Analytic Framework also notes that the Council's analyses take into account market participants' risk profiles and business models. But the Analytic Framework's purpose is not to address such sector-specific distinctions; instead, it describes the Council's overarching approach to financial stability risks regardless of their origin.

The Council also received comments commending the Proposed Framework for providing transparency and clarity with respect to the Council's holistic and deliberative process for identifying, assessing, and addressing risks. Other commenters recommended greater transparency or detail, or stated that nonbank financial companies could not take informed action based on the Proposed Framework to avoid designation under section 113 of the Dodd-Frank Act. Commenters suggested that the Council provide nonbank financial companies with additional guidance on risk mitigants and corrective steps they could undertake to avoid designation. One commenter indicated that the Proposed Framework should take into account different accounting standards when applying metrics and, in particular, incorporate certain accounting standards described by the Council in the nonbank financial company designation context in 2015.[11] The Council believes that the Analytic Framework provides the public and industry participants with considerable transparency into how the Council identifies, assesses, and addresses potential risks to financial stability, regardless of whether the risks stem from widely conducted activities or from individual entities. The Council also believes that nonbank financial companies, market participants, and other interested parties should be able to assess potential risks to financial stability based on the vulnerabilities, sample metrics, and transmission channels described in the Analytic Framework. For example, while the Analytic Framework does not seek to establish a bright-line test for the level of leverage or liquidity risk that could constitute a risk to financial stability, the Analytic Framework identifies these vulnerabilities, explains how the Council evaluates them, provides sample metrics for their quantitative measurement, and describes the channels through which those risks could create risks to financial stability, including through the exposures and asset liquidation transmission channels. The Council believes that the Analytic Framework provides a transparent and constructive explanation of how the Council considers risks to financial stability.

Some commenters recommended that the Analytic Framework specifically address climate-related financial risk, such as by incorporating climate-related financial risk into the Council's interpretation of financial stability, or explicitly accounting for climate-related risks among the Analytic Framework's listed vulnerabilities, sample metrics, or transmission channels. The Council appreciates these comments and has published a number of analyses regarding the emerging and increasing risks that climate change poses to the financial system. However, the Council believes that potential risks related to climate change may be assessed under the vulnerabilities, sample metrics, and transmission channels in the Analytic Framework. For example, to the extent that climate-related financial risks could result in defaults on a company's outstanding obligations, those risks may be considered, in part, through the ''interconnections'' vulnerability and the ''exposures'' transmission channel.

Similarly, some commenters recommended that the Analytic Framework discuss risks to the financial needs of underserved families and communities. As with climate-related financial risks, the Council agrees that risks to financial stability that affect the availability of credit to underserved populations are important, and the Council expects to consider such risks, as appropriate, as part of the approach described in the Analytic Framework. For example, the Council would expect to monitor markets for consumer financial products and services for potential risks under the Analytic Framework's first section; in assessing potential risks, the ''critical function or service'' transmission channel may be particularly relevant to risks concerning the availability of financial services to underserved populations; and to respond to an identified risk, the Council could take an action described in section II.c of the Analytic Framework, including promoting interagency coordination or making recommendations to primary financial regulatory agencies.

Some commenters suggested adding certain other factors to the Analytic Framework. These included assessments regarding the effects of existing regulations, statements prioritizing certain approaches to risk responses and statutory tools over others, and requirements to perform cost-benefit analyses when assessing or responding to certain risks to financial stability. Some of these suggestions were primarily directed at the Proposed

[11] The Council rescinded the referenced guidance in 2019. See Financial Stability Oversight Council, Staff Guidance, Methodologies Relating to Stage 1 Thresholds (June 8, 2015), available at *https://home.treasury.gov/system/files/261/Staff%20Guidance%20Methodologies%20Relating%20to%20Stage%201%20Thresholds.pdf;* Minutes of the Council (Dec. 4, 2019), available at *https://home.treasury.gov/system/files/261/December-4-2019.pdf.*

Guidance and are addressed in the preamble to the Final Guidance. Some were already reflected in the Proposed Framework, including its discussions of the effects of existing regulation. Certain of these comments were beyond the scope of the Analytic Framework.

III. Legal Authority of the Council and Status of the Analytic Framework

The Council has numerous authorities and tools under the Dodd-Frank Act to carry out its statutory purposes.[12] As an agency charged by Congress with broad-ranging responsibilities under the Dodd-Frank Act, the Council has the inherent authority to promulgate interpretive guidance that explains the approach the Council expects to take in identifying, assessing, and responding to certain potential risks to U.S. financial stability.[13] The Council also has authority to issue policy statements.[14] The Analytic Framework provides transparency to the public as to how the Council intends to exercise its discretionary authorities. The Analytic Framework does not have binding effect; does not impose duties on, or alter the rights or interests of, any person; and does not change the statutory standards for the Council's actions.

IV. Executive Orders 12866, 13563, 14094

Executive Orders 12866, 13563, and 14094 direct certain agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Pursuant to section 3(f) of Executive Order 12866, as amended by Executive Order 14094, the Office of Information and Regulatory Affairs within the Office of Management and Budget has determined that the Analytic Framework is not a ''significant regulatory action.''

[12] See, for example, Dodd-Frank Act sections 112(a)(2), 113, 115, 120, and 804, 12 U.S.C. 5322(a)(2), 5323, 5325, 5330, and 5463.

[13] Courts have recognized that ''an agency charged with a duty to enforce or administer a statute has inherent authority to issue interpretive rules informing the public of the procedures and standards it intends to apply in exercising its discretion.'' See, for example, *Prod. Tool* v. *Employment & Training Admin.*, 688 F.2d 1161, 1166 (7th Cir. 1982). The Supreme Court has acknowledged that ''whether or not they enjoy any express delegation of authority on a particular question, agencies charged with applying a statute necessarily make all sorts of interpretive choices.'' *U.S.* v. *Mead,* 533 U.S. 218, 227 (2001).

[14] See *Ass'n of Flight Attendants-CWA, AFL–CIO* v. *Huerta,* 785 F.3d 710 (D.C. Cir. 2015).

Financial Stability Oversight Council

Analytic Framework for Financial Stability Risk Identification, Assessment, and Response

I. Introduction

This document describes the approach the Financial Stability Oversight Council (Council) expects to take in identifying, assessing, and responding to certain potential risks to U.S. financial stability.

The Council's practices set forth in this document are among the methods the Council uses to satisfy its statutory purposes: (1) to identify risks to U.S. financial stability that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace; (2) to promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the government will shield them from losses in the event of failure; and (3) to respond to emerging threats to the stability of the U.S. financial system.[1] The Council's specific statutory duties include monitoring the financial services marketplace in order to identify potential threats to U.S. financial stability and identifying gaps in regulation that could pose risks to U.S. financial stability, among others.[2]

Financial stability can be defined as the financial system being resilient to events or conditions that could impair its ability to support economic activity, such as by intermediating financial transactions, facilitating payments, allocating resources, and managing risks. Events or conditions that could substantially impair such ability would constitute a threat to financial stability. Adverse events, or shocks, can arise from within the financial system or from external sources. Vulnerabilities in the financial system can amplify the impact of a shock, potentially leading to substantial disruptions in the provision of financial services. The Council seeks to identify and respond to risks to financial stability that could impair the financial system's ability to perform its functions to a degree that could harm the economy. Risks to financial stability can arise from widely conducted activities or from individual entities, and from long-term vulnerabilities or from sources that are new or evolving.

This document describes the Council's analytic framework for identifying, assessing, and responding to potential risks to financial stability. The Council seeks to reduce the risk of a shock arising from within the financial system, to improve resilience against shocks that could affect the financial system, and to mitigate financial vulnerabilities that may increase risks to financial stability. The actions the Council may take depend on the nature of the vulnerability. For example, vulnerabilities originating from activities that may be widely conducted in a particular sector or market over which a regulator has adequate existing authority may be addressed through an activity-based or industry-wide response; in contrast, in cases where the financial system relies on the ongoing financial activities of a small number of entities, such that the impairment of one of the entities could threaten financial stability, or where a particular financial company's material financial distress or activities could pose a threat to financial stability, entity-based action may be appropriate. The Council's authorities, some of which are described in section II.c, are complementary, and the Council may select one or more of those authorities to address a particular risk.

Among the many lessons of financial crises are that risks to financial stability can be diverse and build up over time, dislocations in financial markets and failures of financial companies can be sudden and unpredictable, and regulatory gaps can increase risks to financial stability. The Council was created in the aftermath of the 2007–2009 financial crisis and is statutorily responsible for identifying and preemptively acting to address potential risks to financial stability. Many of the same factors, such as leverage, liquidity risk, and operational risks, regularly recur in different forms and under different conditions to generate risks to financial stability. At the same time, the U.S. financial system is large, diverse, and continually evolving, so the Council's analytic methodologies adapt to address evolving developments and risks.

This document is not a binding rule, but is intended to help market participants, stakeholders, and other members of the public better understand how the Council expects to perform certain of its duties. The Council may consider factors relevant to the assessment of a potential risk or threat to U.S. financial stability on a case-by-case basis, subject to applicable statutory requirements. The Council's

[1] Dodd-Frank Act Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) section 112(a)(1), 12 U.S.C. 5322(a)(1).

[2] Dodd-Frank Act section 112(a)(2), 12 U.S.C. 5322(a)(2).

annual reports describe the Council's work in implementing its responsibilities.

II. Identifying, Assessing, and Addressing Potential Risks to Financial Stability

a. Identifying Potential Risks

To enable the Council to identify potential risks to U.S. financial stability, the Council, in consultation with relevant U.S. and foreign financial regulatory agencies,[3] monitors financial markets, entities, and market developments to identify potential risks to U.S. financial stability.

In light of the Council's broad statutory mandate, the Council's monitoring for potential risks to financial stability may cover an expansive range of asset classes, institutions, and activities, such as:

- markets for debt, loans, short-term funding, equity securities, commodities, digital assets, derivatives, and other institutional and consumer financial products and services;
- central counterparties and payment, clearing, and settlement activities;
- financial entities, including banking organizations, broker-dealers, asset managers, investment companies, private funds, insurance companies, mortgage originators and servicers, and specialty finance companies;
- new or evolving financial products and practices; and
- developments affecting the resiliency of the financial system, such as cybersecurity and climate-related financial risks.

Sectors and activities that may impact U.S. financial stability are often described in the Council's annual reports. The Council reviews information such as historical data, research regarding the behavior of financial markets and financial market participants, and new developments that arise in evolving marketplaces. The Council relies on data, research, and analysis including information from Council member agencies, the Office of Financial Research, primary financial regulatory agencies, industry participants, and other sources.[4]

b. Assessing Potential Risks

The Council works with relevant financial regulatory agencies to evaluate potential risks to financial stability to determine whether they merit further review or action. The evaluation of any potential risk to financial stability will be highly fact-specific, but the Council has identified certain vulnerabilities that most commonly contribute to such risks. The Council has also identified certain sample quantitative metrics that are commonly used to measure these vulnerabilities, although the Council may assess each of these vulnerabilities using a variety of quantitative and qualitative factors. The following list is not exhaustive or exclusive, but is indicative of the vulnerabilities and metrics the Council expects to consider.

- *Leverage.* Leverage can amplify risks by reducing market participants' ability to satisfy their obligations and by increasing the potential for sudden liquidity strains. Leverage can arise from debt, derivatives, off-balance sheet obligations, and other arrangements. Leverage can arise broadly within a market or at a limited number of firms in a market. Quantitative metrics relevant for assessing leverage may include ratios of assets, risk-weighted assets, debt, derivatives liabilities or exposures, and off-balance sheet obligations to equity.
- *Liquidity risk and maturity mismatch.* A shortfall of sufficient liquidity to satisfy short-term needs, or reliance on short-term liabilities to finance longer-term assets, can subject market participants to rollover or refinancing risk. These risks may force entities to sell assets rapidly at stressed market prices, which can contribute to broader stresses. Relevant quantitative metrics may include the scale of financial obligations that are short-term or can become due in a short period, the ratio of short-term debt to unencumbered short-term high-quality liquid assets, amounts of funding available to meet unexpected reductions in available short-term funding, and amounts of transactions that may require the posting of additional margin or collateral.
- *Interconnections.* Direct or indirect financial interconnections, such as exposures of creditors, counterparties, investors, and borrowers, can increase the potential negative effect of dislocations or financial distress. Relevant quantitative metrics may include total assets, off-balance-sheet assets or liabilities, total debt, derivatives exposures, values of securities financing transactions, and the size of potential requirements to post margin or collateral. Metrics related to the concentration of holdings of a class of financial assets may also be relevant.
- *Operational risks.* Risks can arise from the impairment or failure of financial market infrastructures, processes, or systems, including due to cybersecurity vulnerabilities. Relevant quantitative metrics may include statistics on cybersecurity incidents or the scale of critical infrastructure.
- *Complexity or opacity.* A risk may be exacerbated if a market, activity, or firm is complex or opaque, such as if financial transactions occur outside of regulated sectors or if the structure and operations of market participants cannot readily be determined. In addition, risks may be aggravated by the complexity of the legal structure of market participants and their activities, by the unavailability of data due to lack of regulatory or public disclosure requirements, and by obstacles to the rapid and orderly resolution of market participants. Factors that generally increase the risks associated with complexity or opacity may include a large size or scope of activities, a complex legal or operational structure, activities or entities subject to the jurisdiction of multiple regulators, and complex funding structures. Relevant quantitative metrics may include the extent of intercompany or interaffiliate dependencies for liquidity, funding, operations, and risk management; the number of jurisdictions in which activities are conducted; and numbers of affiliates.
- *Inadequate risk management.* A risk may be exacerbated if it is conducted without effective risk-management practices, including the absence of appropriate regulatory authority and requirements. In contrast, existing regulatory requirements or market practices may reduce risks by, for example, limiting exposures or leverage, increasing capital and liquidity, enhancing risk-management practices, restricting excessive risk-taking, providing consolidated prudential regulation and supervision, or increasing regulatory or public transparency. Relevant quantitative metrics may include levels of exposures to particular types of financial instruments or asset classes and amounts of capital and liquidity.
- *Concentration.* A risk may be amplified if financial exposures or important services are highly concentrated in a small number of entities, creating a risk of widespread losses or the risk that the service could not be replaced in a timely manner at a similar price and volume if existing providers withdrew from the market. Relevant quantitative metrics may include market shares in segments of applicable financial markets.

[3] References in this document to ''financial regulatory agencies'' may encompass a broader range of regulators than those included in the statutory definition of ''primary financial regulatory agency'' under section 2(12) of the Dodd-Frank Act, 12 U.S.C. 5301(12).

[4] See Dodd-Frank Act section 112(d), 12 U.S.C. 5322(d).

• *Destabilizing activities.* Certain activities, by their nature, particularly those that are sizeable and interconnected with the financial system, can destabilize markets for particular types of financial instruments or impair financial institutions. This risk may arise even when those activities are intentional and permitted by applicable law, such as trading practices that substantially increase volatility in one or more financial markets, or activities that involve moral hazard or conflicts of interest that result in the creation and transmission of significant risks.

The vulnerabilities and sample metrics listed above identify risks that may arise from broadly conducted activities or from a small number of entities; they do not dictate the use of a specific authority by the Council. Risks to financial stability can arise from widely conducted activities or from a smaller number of entities, and the Council's evaluations and actions will depend on the nature of a vulnerability. While risks from individual entities may be assessed using these types of metrics, the Council also evaluates broader risks, such as by calculating these metrics on an aggregate basis within a particular financial sector. For example, in some cases, risks arising from widespread and substantial leverage in a particular market may be evaluated or addressed on a sector-wide basis, while in other cases risks from a single company whose leverage is outsized relative to other firms in its market may be considered for an entity-specific response.

In addition, in most cases the identification and assessment of a potential risk to financial stability involves consideration of multiple quantitative metrics and qualitative factors. Therefore, the Council uses metrics such as those cited above individually and in combination, as well as other factors, in its analyses.

The Council considers how the adverse effects of potential risks could be transmitted to financial markets or market participants and what impact the potential risk could have on the financial system. Such a transmission of risk can occur through various mechanisms, or ''channels.'' The Council has identified four transmission channels that are most likely to facilitate the transmission of the negative effects of a risk to financial stability. These transmission channels are:

• *Exposures.* Direct and indirect exposures of creditors, counterparties, investors, and other market participants can result in losses in the event of a default or decreases in asset valuations. In particular, market participants' exposures to a particular financial instrument or asset class, such as equity, debt, derivatives, or securities financing transactions, could impair those market participants if there is a default on or other reduction in the value of the instrument or assets. In evaluating this transmission channel, risks arising from exposures to assets managed by a company on behalf of third parties are distinct from exposures to assets owned by, or liabilities issued by, the company itself. The potential risk to U.S. financial stability will generally be greater if the amounts of exposures are larger; if transaction terms provide less protection for counterparties; if exposures are correlated, concentrated, or interconnected with other instruments or asset classes; or if entities with significant exposures include large financial institutions. The leverage, interconnections, and concentration vulnerabilities described above may be particularly relevant to this transmission channel.

• *Asset liquidation.* A rapid liquidation of financial assets can pose a risk to U.S. financial stability when it causes a significant fall in asset prices that disrupts trading or funding in key markets or causes losses or funding problems for market participants holding those or related assets. Rapid liquidations can result from a deterioration in asset prices or market functioning that could pressure firms to sell their holdings of affected assets to maintain adequate capital and liquidity, which, in turn, could produce a cycle of asset sales that lead to further market disruptions. This analysis takes into account amounts and types of liabilities that are or could become short-term in nature, amounts of assets that could be rapidly liquidated to satisfy obligations, and the potential effects of a rapid asset liquidation on markets and market participants. The potential risk is greater, for example, if leverage or reliance on short-term funding is higher, if assets are riskier and may experience a reduction in market liquidity in times of broader market stress, and if asset price volatility could lead to significant margin calls. Actions that market participants or financial regulators may take to impose stays on counterparty terminations or withdrawals may reduce the risks of rapid asset liquidations, although such actions could potentially increase risks through the exposures transmission channel if they result in potential losses or delayed payments or through the contagion transmission channel if there is a loss of market confidence. The leverage and liquidity risk and maturity mismatch vulnerabilities described above may be particularly relevant to this transmission channel.

• *Critical function or service.* A risk to financial stability can arise if there could be a disruption of a critical function or service that is relied upon by market participants and for which there are no ready substitutes that could provide the function or service at a similar price and quantity. This channel is commonly referred to as ''substitutability.'' Substitutability risks can arise in situations where a small number of entities are the primary or dominant providers of critical services in a market that the Council determines to be essential to U.S. financial stability. Concern about a potential lack of substitutability could be greater if providers of a critical function or service are likely to experience stress at the same time because they are exposed to the same risks. This channel is more prominent when the critical function or service is interconnected or large, when operations are opaque, when the function or service uses or relies on leverage to support its activities, or when risk-management practices related to operational risks are not sufficient. The interconnections, operational risks, and concentration vulnerabilities described above may be particularly relevant to this transmission channel.

• *Contagion.* Even without direct or indirect exposures, contagion can arise from the perception of common vulnerabilities or exposures, such as business models or asset holdings that are similar or highly correlated. Such contagion can spread stress quickly and unexpectedly, particularly in circumstances where there is limited transparency into investment risks, correlated markets, or greater operational risks. Contagion can also arise when there is a loss of confidence in financial instruments that are treated as substitutes for money. In these circumstances, market dislocations or fire sales may result in a loss of confidence in other financial market sectors or participants, propagating further market dislocations or fire sales. The interconnections and complexity or opacity vulnerabilities described above may be particularly relevant to this transmission channel.

The presence of any of the vulnerabilities listed above may increase the potential for risks to be transmitted to financial markets or market participants through these or other transmission channels. The Council may consider these vulnerabilities and transmission channels, as well as others that may be relevant, in identifying financial markets, activities, and entities that could pose risks to U.S. financial stability.

The Council may assess risks as they could arise in the context of a period of overall stress in the financial services industry and in a weak macroeconomic environment, with market developments such as increased counterparty defaults, decreased funding availability, and decreased asset prices, because in such a context, the risks may have a greater effect on U.S. financial stability.

The Council's work often includes efforts such as sharing data, research, and analysis among Council members and member agencies and their staffs; consulting with regulators and other experts regarding the scope of potential risks and factors that may mitigate those risks; and collaboratively developing analyses for consideration by the Council. As part of this work, the Council may also engage with market participants and other members of the public as it assesses potential risks. In its evaluations, the Council takes into account existing laws and regulations that have mitigated a potential risk to U.S. financial stability. The Council also engages extensively with state and federal financial regulatory agencies, including those represented on the Council, regarding potential risks and the extent to which existing regulation may mitigate those risks. The Council also takes into account the risk profiles and business models of market participants. Empirical data may not be available regarding all potential risks. The type and scope of the Council's analysis will be based on the potential risk under consideration. In many cases, the Council provides information regarding its work in its annual reports.

c. Addressing Potential Risks

In light of the varying sources of risk described above (such as activities, entities, exogenous circumstances, and existing or emerging practices or conditions), the Council may take different approaches to respond to a risk, and may use multiple tools to mitigate a risk. These approaches may include acting to reduce the risk of a shock arising from within the financial system, to mitigate financial vulnerabilities that may increase risks to financial stability, or to improve the resilience of the financial system to shocks. The actions the Council takes may depend on the circumstances. When a potential risk to financial stability is identified, the Council's Deputies Committee will generally direct one or more of the Council's staff-level committees or working groups to consider potential policy approaches or actions the Council could take to assess and address the risk. Those committees and working groups may consider the utility of any of the Council's authorities to respond to risks to U.S. financial stability, including but not limited to those described below.

Interagency coordination and information sharing. In many cases, the Council works with the relevant financial regulatory agencies at the federal and state levels to seek the implementation of appropriate actions to ensure a potential risk is adequately addressed.[5] If they have adequate authority, existing regulators could take actions to mitigate potential risks to U.S. financial stability identified by the Council. There may be various approaches existing regulators could take, based on their authorities and the urgency of the risk, such as enhancing their regulation or supervision of companies or markets under their jurisdiction, restricting or prohibiting the offering of a product, or requiring market participants to take additional risk-management steps. If existing regulators can address a risk to financial stability in a sufficient and timely way, the Council generally encourages those regulators to do so.

Recommendations to agencies or Congress. The Council may also make formal public recommendations to primary financial regulatory agencies under section 120 of the Dodd-Frank Act. Under section 120, the Council may provide for more stringent regulation of a financial activity by issuing nonbinding recommendations to the primary financial regulatory agencies to apply new or heightened standards and safeguards for a financial activity or practice conducted by bank holding companies or nonbank financial companies under their jurisdiction.[6] In addition, in any case in which no primary financial regulatory agency exists for nonbank financial companies conducting financial activities or practices identified by the Council as posing risks, the Council can consider reporting to Congress on recommendations for legislation that would prevent such activities or practices from threatening U.S. financial stability.[7] The Council will make these recommendations only if it determines that the conduct, scope, nature, size, scale, concentration, or interconnectedness of the activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies, U.S. financial markets, or low-income, minority, or underserved communities.[8] The new or heightened standards and safeguards for a financial activity or practice recommended by the Council will take costs to long-term economic growth into account, and may include prescribing the conduct of the activity or practice in specific ways (such as by limiting its scope, or applying particular capital or risk-management requirements to the conduct of the activity) or prohibiting the activity or practice.[9] In its recommendations under section 120, the Council may suggest broad approaches to address the risks it has identified. When appropriate, the Council may make a more specific recommendation. Prior to issuing a recommendation under section 120, the Council will consult with the relevant primary financial regulatory agency and provide notice to the public and opportunity for comment as required by section 120.[10]

Nonbank financial company determinations. In certain cases, the Council may evaluate one or more nonbank financial companies for an entity-specific determination under section 113 of the Dodd-Frank Act. Under section 113, the Council may determine, by a vote of not fewer than two-thirds of the voting members of the Council then serving, including an affirmative vote by the Chairperson of the Council, that a nonbank financial company will be supervised by the Federal Reserve Board and be subject to prudential standards if the Council determines that (1) material financial distress at the nonbank financial company could pose a threat to the

[5] See Dodd-Frank Act sections 112(a)(2)(A), (D), (E), and (F), 12 U.S.C. 5322(a)(2)(A), (D), (E), and (F).

[6] Dodd-Frank Act section 120(a), 12 U.S.C. 5330(a).

[7] Dodd-Frank Act section 120(d)(3), 12 U.S.C. 5330(d)(3).

[8] Dodd-Frank Act section 120(a), 12 U.S.C. 5330(a).

[9] Dodd-Frank Act section 120(b)(2), 12 U.S.C. 5330(b)(2).

[10] See Dodd-Frank Act section 120(b)(1), 12 U.S.C. 5330(b)(1). The Council also has authority to issue recommendations to the Board of Governors of the Federal Reserve System (Federal Reserve Board) regarding the establishment and refinement of prudential standards and reporting and disclosure requirements applicable to nonbank financial companies subject to Federal Reserve Board supervision and large, interconnected bank holding companies (Dodd-Frank Act section 115, 12 U.S.C. 5325); recommendations to regulators, Congress, or firms in its annual reports (Dodd-Frank Act section 112(a)(2)(N), 12 U.S.C. 5322(a)(2)(N)); and other recommendations to Congress or Council member agencies (Dodd-Frank Act sections 112(a)(2)(D) and (F), 12 U.S.C. 5322(a)(2)(D) and (F)).

financial stability of the United States or (2) the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company could pose a threat to the financial stability of the United States. The Council has issued a procedural rule and interpretive guidance regarding its process for considering a nonbank financial company for potential designation under section 113.[11] The Dodd-Frank Act requires the Council to consider 10 specific considerations, including the company's leverage, relationships with other significant financial companies, and existing regulation by primary financial regulatory agencies, when determining whether a nonbank financial company satisfies either of the determination standards.[12] Due to the unique threat that each nonbank financial company could pose to U.S. financial stability and the nature of the inquiry required by the statutory considerations set forth in section 113, the Council expects that its evaluations of nonbank financial companies under section 113 will be firm-specific and may include an assessment of quantitative and qualitative information that the Council deems relevant to a particular nonbank financial company. The factors described above are not exhaustive or exclusive and may not apply to all nonbank financial companies under evaluation.

Payment, clearing, and settlement activity designations. The Council also has authority to designate certain payment, clearing, and settlement (PCS) activities ''that the Council determines are, or are likely to become, systemically important'' under Title VIII of the Dodd-Frank Act.[13] PCS activities are defined as activities carried out by one or more financial institutions to facilitate the completion of financial transactions such as funds transfers, securities contracts, futures, forwards, repurchase agreements, swaps, foreign exchange contracts, and financial derivatives. Under the Dodd-Frank Act, PCS activities may include (1) the calculation and communication of unsettled financial transactions between counterparties; (2) the netting of transactions; (3) provision and maintenance of trade, contract, or instrument information; (4) the management of risks and activities associated with continuing financial transactions; (5) transmittal and storage of payment instructions; (6) the movement of funds; (7) the final settlement of financial transactions; and (8) other similar functions that the Council may determine.[14] Before designating a PCS activity, the Council must consult with certain regulatory agencies and must provide financial institutions with advance notice of the proposed designation by **Federal Register** publication. A financial institution engaged in the PCS activity may request an opportunity for a written or, at the sole discretion of the Council, oral hearing before the Council to demonstrate that the proposed designation is not supported by substantial evidence. The Council may waive the notice and hearing requirements in certain emergency circumstances.[15] Following any designation of a PCS activity, the appropriate federal regulator will establish risk-management standards governing the conduct of the activity by financial institutions.[16] The objectives and principles for these risk-management standards will be to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system.[17] The risk-management standards may address areas such as risk-management policies and procedures, margin and collateral requirements, participant or counterparty default policies and procedures, the ability to complete timely clearing and settlement of financial transactions, and capital and financial resource requirements for designated financial market utilities, among other things.[18]

Financial market utility designations. In addition, the Council has authority to designate financial market utilities (FMUs) that it determines are, or are likely to become, systemically important.[19] Subject to certain statutory exclusions, an FMU is defined as any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person.[20] The Council has issued a procedural rule regarding its authority to designate FMUs.[21] In determining whether designation of a given FMU is warranted, the Council must consider (1) the aggregate monetary value of transactions processed by the FMU; (2) the FMU's aggregate exposure to its counterparties; (3) the relationship, interdependencies, or other interactions of the FMU with other FMUs or PCS activities; (4) the effect that the failure of or a disruption to the FMU would have on critical markets, financial institutions, or the broader financial system; and (5) any other factors that the Council deems appropriate.[22] A designated FMU is subject to the supervisory framework of Title VIII of the Dodd-Frank Act. Section 805(a)(1)(A) requires the Federal Reserve Board to prescribe risk-management standards governing the FMU's operations related to its PCS activities unless the FMU is a derivatives clearing organization or clearing agency.[23] Specifically, section 805(a)(2) grants the Commodity Futures Trading Commission or the Securities and Exchange Commission, respectively, the authority to prescribe such risk-management standards for a designated FMU that is a derivatives clearing organization registered under section 5b of the Commodity Exchange Act or a clearing agency registered under section 17A of the Securities Act of 1934.[24] Such standards are intended to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system.[25] In addition, the Federal Reserve Board may authorize a Federal Reserve Bank to establish and maintain an account for a designated FMU or provide the designated FMU with access, in unusual or exigent circumstances, to the discount window.[26] A designated FMU is subject to examinations at least once

[11] See 12 CFR part 1310.

[12] Dodd-Frank Act sections 113(a)(2) and (b)(2), 12 U.S.C. 5323(a)(2) and (b)(2).

[13] See Dodd-Frank Act section 804(a)(1), 12 U.S.C. 5463(a)(1).

[14] Dodd-Frank Act section 803(7), 12 U.S.C. 5462(7).

[15] Dodd-Frank Act section 804(c), 12 U.S.C. 5463(c).

[16] Dodd-Frank Act section 805(a), 12 U.S.C. 5464(a).

[17] Dodd-Frank Act section 805(b), 12 U.S.C. 5464(b).

[18] Dodd-Frank Act section 805(c), 12 U.S.C. 5464(c).

[19] Dodd-Frank Act section 804(a)(1), 12 U.S.C. 5463(a)(1).

[20] Dodd-Frank Act section 803(6), 12 U.S.C. 5462(6).

[21] 12 CFR part 1320.

[22] Dodd-Frank Act section 804(a)(2), 12 U.S.C. 5463(a)(2). See also 12 CFR 1320.10.

[23] Dodd-Frank Act section 805(a)(1)(A), 12 U.S.C. 5464(a)(1).

[24] Dodd-Frank Act section 805(a)(2), 12 U.S.C. 5464(a)(2); see also Dodd-Frank Act section 803(8), 12 U.S.C. 5462(8).

[25] Dodd-Frank Act section 805(b), 12 U.S.C. 5464(b).

[26] Dodd-Frank Act sections 806(a) and (b), 12 U.S.C. 5465(a) and (b).

annually by the relevant federal supervisory agency.[27]

Nellie Liang,

Under Secretary for Domestic Finance.

[FR Doc. 2023–25055 Filed 11–13–23; 8:45 am]

BILLING CODE 4810–AK–P–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0157; Docket No. 2023–0053; Sequence No. 7]

Submission for OMB Review; Architect-Engineer Qualifications (SF–330)

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding architect-engineer qualifications (Standard Form (SF) 330).

DATES: Submit comments on or before December 14, 2023.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0157, Architect-Engineer Qualifications, SF–330.

B. Need and Uses

This clearance covers the information that offerors must submit to comply with the following Federal Acquisition Regulation (FAR) requirement:

Standard Form (SF) 330, Architect-Engineer Qualifications. As specified in FAR 36.702(b), an architect-engineer firm must provide information about its qualifications for a specific contract when the contract amount is expected to exceed the simplified acquisition threshold (SAT).

Part I—Contract-Specific Qualifications. The information on the form is reviewed by a selection panel composed of professionals and assists the panel in selecting the most qualified architect-engineer firm to perform the specific project. The form is designed to provide a uniform method for architect-engineer firms to submit information on experience, personnel, and capabilities of the architect-engineer firm to perform along with information on the consultants they expect to collaborate with on the specific project. Part I of the SF 330 may be used when the contract amount is expected to be at or below the SAT, if the contracting officer determines that its use is appropriate.

Part II—General Qualifications. The information obtained on this form is used to determine if a firm should be solicited for architect-engineer projects. Architect-engineer firms are encouraged to update the form annually. Part II of the SF 330 is used to obtain information from an architect-engineer firm about its general professional qualifications.

The SF 330 accomplishes the following:

- Expands essential information about qualifications and experience data including:
- An organizational chart of all participating firms and key personnel.
- For all key personnel, a description of their experience in 5 relevant projects.
- A description of each example project performed by the project team (or some elements of the project team) and its relevance to the agency's proposed contract.
- A matrix of key personnel who participated in the example projects. This matrix graphically illustrates the degree to which the proposed key personnel have worked together before on similar projects.
- Reflects current architect-engineer disciplines, experience types and technology.
- Permits limited submission length thereby reducing costs for both the architect-engineer industry and the Government. Lengthy submissions do not necessarily lead to a better decision on the best-qualified firm. The proposed SF 330 indicates that agencies may limit the length of a firm's submissions, either certain sections or the entire package. The Government's right to impose such limitations was established in case law (Coffman Specialties, Inc., B–284546. N–284546/2, 2000 U.S. Comp. Gen. LEXIS 58, May 10, 2000).

The contracting officer uses the information provided on the SF 330 to evaluate firms to select an architect-engineer firm for a contract.

C. Annual Burden

Respondents: 682.

Total Annual Responses: 2,728.

Total Burden Hours: 79,112.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 88 FR 60209, on August 31, 2023. Two identical comments were received in *Regulations.gov* but not posted to be publicly viewable because they were not relevant or responsive to the request for comments. The identical comments seem to be unsolicited bulk email.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0157, Architect-Engineer Qualifications (SF–330).

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2023–25031 Filed 11–13–23; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-24–24AZ; Docket No. CDC–2023–0092]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information

[27] Dodd-Frank Act section 807, 12 U.S.C. 5466.

collection project titled OD2A—LOCAL Linkage to and Retention in Care Surveillance. This project is designed to help standardize data processes that drive data-to-action decision-making and improve intra-jurisdictional comparisons over time.

DATES: CDC must receive written comments on or before January 16, 2024.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0092 by either of the following methods:

• *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, H 21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Overdose Data to Action (OD2A)—LOCAL Linkage to and Retention in Care Surveillance—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In the United States, opioid overdose deaths have increased significantly over the years. Drug overdose deaths in the United States increased by 14% from 2020 to 2021. Of the 106,699 drug overdose deaths in 2021, over 75% involved an opioid. Deaths involving psychostimulants, such as methamphetamine, also increased from 2020 to 2021. Scaling up prevention and surveillance activities to address substance misuse and nonfatal and fatal drug overdoses are priorities for the Centers for Disease Control and Prevention (CDC). Evidence shows that reducing drug overdoses requires increased capacity for linking people to treatment and harm reduction services and improving retention across care settings. Linking individuals with a substance use disorder to treatment and harm reduction is a key strategy for saving lives and it is crucial that jurisdictions implement surveillance strategies that can inform and improve their linkage to and retention in care activities.

In September 2023, CDC launched a new surveillance program as part of the Overdose Data to Action: Limiting Overdose through Collaborative Actions in Localities (OD2A: LOCAL) Notice of Funding Opportunity (NOFO): Linkage to and Retention in Care surveillance. Linkage to Care is a five-year NOFO which connects individuals at risk of overdose to evidence-based treatment, services, and supports, thereby reducing future overdoses and other harms associated with substance use. Implementation of surveillance systems to collect data on standardized Linkage to and Retention in Care indicators is needed so that health departments can measure the impact of their linkage to care programs, inform overdose prevention activities, and appropriately allocate public health resources where they are most needed.

Funded local health departments will be tasked with the collection and sharing of standardized Linkage to and Retention in Care indicators with CDC, as part of this effort. Local health departments are uniquely suited to implement surveillance systems for standardized Linkage to and Retention in Care (LTC) indicators due to their proximity to the communities they serve and access to data from local linkage to care programs and activities. Following an extensive environmental scan and with input from local and state overdose prevention and response programs, the CDC defined a substance use disorder cascade of care (CoC) and a set of minimum standard measures to assess local LTC efforts. The overarching goal of this initiative hinges on generating actionable data that jurisdictions can leverage to enhance and fine-tune their linkage to and retention in care programs. Linkage to and Retention in Care surveillance will also foster a robust foundation for deriving insights into disparities, unmet needs, and optimal practices across the CoC. This approach will help standardize data processes to drive data-to-action decision making and improve intra-jurisdictional comparisons over time to drive better health outcomes. Ultimately, a standardized approach ensures that a greater number of individuals access the care they require and drives meaningful change in how individuals are connected to care.

CDC requests OMB approval for an estimated 240 annual burden hours for this collection. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Participating health departments reporting aggregate data to CDC using Partner's Portal (every 6 months).	Partner's Portal Data Entry Form (Up to 60 indicators).	12	2	8	192
	Partner's Portal Data Entry Form (9 metadata questions).	12	2	2	48
Total					240

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–25087 Filed 11–13–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–24–1408]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) received approval from the Office of Management and Budget (OMB) to conduct Rapid Surveys System (RSS)(OMB Control No. 0920–1408), which includes fielding four surveys per year. The 06/30/2022 date clearance approved the Round 1 survey. A second round of the RSS was additionally approved. In accordance with the Terms of Clearance NCHS will publish a 30-day **Federal Register** Notice announcing each new survey so that public comments can be received about the specific content of each survey. This notice includes specific details about the questions that would be asked in the third round of the RSS and serves to allow 30 days for public and affected agency comments, consistent with OMB's terms of clearance.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Center for Health Statistics (NCHS) Rapid Surveys System (RSS) Round 3 (OMB Control No. 0920–1408)—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C.), as amended, authorizes the Secretary of Health and Human Services (HHS), acting through the National Center for Health Statistics (NCHS), to collect data about the health of the population of the United States. Rapid Surveys System (RSS)(OMB Control No. 0920–1408) collects data on emerging public health topics, attitudes, and behaviors using cross-sectional samples from two commercially available, national probability-based online panels. The RSS then combines these data to form estimates that approximate national representation in ways that many data collection approaches cannot. The RSS collects data in contexts in which decision makers' need for time-sensitive data of known quality about emerging and priority health concerns is a higher priority than their need for statistically unbiased estimates.

The RSS complements NCHS's current household survey systems. As quicker turnaround surveys that require less accuracy and precision than CDC's more rigorous population representative surveys, the RSS incorporates multiple mechanisms to carefully evaluate the resulting survey data for their appropriateness for use in public health surveillance and research (*e.g.,* hypothesis generating) and facilitates continuous quality improvement by supplementing these panels with intensive efforts to understand how well the estimates reflect populations at most risk. The RSS data dissemination strategy communicates the strengths and limitations of data collected through online probability panels as compared to more robust data collection methods.

The RSS has three major goals: (1) to provide CDC and other partners with time-sensitive data of known quality about emerging and priority health concerns; (2) to use these data collections to continue NCHS's evaluation of the quality of public health estimates generated from commercial online panels; and (3) to improve methods to communicate the appropriateness of public health estimates generated from commercial online panels. The RSS is designed to have four rounds of data collection each year with data being collected by two contractors with probability panels. A cross-sectional nationally representative sample will be drawn from the online probability panel maintained by each of the contractors. As part of the base (minimum sample size), each round of data collection will collect 2,000 responses per quarter. The RSS can be expanded by increasing the number of completed responses per round or the number of rounds per year as needed up to a maximum of 28,000 responses per year per contractor or 56,000 total responses per year. Additionally, each data collection may include up to 2,000 additional responses per quarter (8,000 for the year) to improve representativeness. This increases the maximum burden by up to 16,000 responses per year. The RSS may also target individual surveys to collect data only from specific subgroups within existing survey panels and may supplement data collection for such groups with additional respondents from other probability or nonprobability samples. An additional 12,000 responses per year may be used for these developmental activities. Survey questions being asked of the panelists will be cognitively tested. This cognitive testing will help survey users interpret the findings by understanding how respondents answer each question.

Each round's questionnaire will consist of four main components: (1) basic demographic information on respondents to be used as covariates in analyses; (2) new, emerging, or supplemental content proposed by NCHS, other CDC Centers, Institute, and Offices, and other HHS agencies; (3) questions used for calibrating the survey weights; and (4) additional content selected by NCHS to evaluate against relevant benchmarks. NCHS will use questions from Components 1 and 2 to provide relevant, timely data on new, emerging, and priority health topics to be used for decision making. NCHS will use questions from Components 3 and 4 to weight and evaluate the quality of the estimates coming from questions in Components 1 and 2. Components 1 and 2 will contain different topics in each round of the survey. NCHS submits a 30-day **Federal Register** Notice with information on the contents of each round of data collection.

NCHS calibrates survey weights from the RSS to gold standard surveys. Questions used for calibration in this round of RSS will include marital status, employment, social and work limitations, use of the internet in general and for medical reasons, telephone use, civic engagement, and language used at home and in other settings. All these questions have been on the National Health Interview Survey (NHIS) in prior years allowing calibration to these data.

Finally, all RSS rounds will include several questions that were previously on NHIS for benchmarking to evaluate data quality. Panelists in the RSS will be asked about health status; chronic conditions; disability; healthcare access and utilization; health behaviors; and food insecurity.

The estimated total annual burden hours for the three-year approval period remains at 28,079 burden hours. The NCHS RSS Round 3 (2024) data collection is based on 13,100 complete surveys (4,367 hours) and 20 cognitive interviews (20 hours) using the same survey instrument for a total of 4,387 hours. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Adults 18+	Survey: NCHS RSS Round 3	13,100	1	20/60
Adult 18+	Cognitive Interviews	20	1	1

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–25086 Filed 11–13–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–24–23BJ]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''U.S. National Authority for Containment of Poliovirus Data Collection Tools'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on December 12, 2022 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

U.S. National Authority for Containment of Poliovirus Data Collection Tools—New—Office of Readiness and Response (ORR), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The role of the National Authority for Containment (U.S. NAC) of Poliovirus is to ensure that the requirements established in the World Health Organization (WHO) Global Action Plan (GAP) III/IV standard are effectively implemented and maintained in facilities working with or storing infectious poliovirus or potentially infectious materials. Risk assessments following an incident are a critical component for adequate application of the GAP standard. To support risk assessment activities, The ''Facility Incident Reporting Form for Poliovirus Release and Potential Exposure'' and the ''Facility Incident Reporting Form for Poliovirus Theft or Loss'' forms were created for facilities to capture and submit incident information to the U.S. NAC. These forms will not only address the biosafety and biosecurity containment emergency elements of the GAP standard but will also inform the U.S. NAC risk assessments and thereby, guide CDC's determination of the emergency response level and direction.

The information collected in the ''Personal Protective Equipment Survey for Laboratories'' will assist the Centers for Disease Control and Prevention (CDC), U.S. NAC and National Institute for Occupational Safety and Health (NIOSH) with developing guidance and recommendations for PPE selection and use in support of poliovirus containment, as well as identify laboratory PPE commonly used to evaluate laboratory PPE performance characteristics in testing studies.

Information collected in the ''Global Action Plan (GAP) Poliovirus Containment Poliovirus-Essential Facility Assessment Checklist'' will aid U.S. facilities in preparing for an audit to obtain a poliovirus certificate of containment. Data collected from this form will also collect additional information on poliovirus materials held by a U.S. facility, their work activities, and facility features.

The ''Poliovirus Containment Sampling Plan and Sanitation Assessment Form for Wastewater (WW) Systems Supporting a Poliovirus-Essential Facility (PEF) in the United States'' form will collect information to assess a poliovirus facility's essential WW system, the primary safeguards to reduce and control the release of poliovirus from the facility. In addition, it will verify the safeguards of local WW utilities that receive WW from the PEF.

OMB approval is sought for three years. The annualized time burden for this information collection is estimated to be 125 hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form Name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Facility Staff/Leadership	Facility Incident Reporting Form for Poliovirus Release or Potential Exposure.	10	1	45/60
Facility Staff/Leadership	Facility Incident Reporting Form for Poliovirus Theft or Loss	10	1	45/60
Facility Staff/Leadership	Personal Protective Equipment Survey for Laboratories	20	1	90/60
Facility Staff/Leadership	GAP Poliovirus Containment Poliovirus-Essential Facility Questionnaire.	20	1	90/60
Facility Staff/Leadership	GAP Facility Assessment Checklist	20	1	1
Facility Staff/Leadership	The Poliovirus Containment Sampling Plan and Sanitation Assessment Form for Wastewater (WW) Systems Supporting a Poliovirus-Essential Facility (PEF) in the United States.	20	1	90/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–25082 Filed 11–13–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–24–0214]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''National Health Interview Survey (NHIS)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on August 21, 2023 to obtain comments from the public and affected agencies. CDC receive three comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Health Interview Survey (NHIS) (OMB Control No. 0920–0214, Exp. 12/31/2023)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C.), as amended, authorizes that the Secretary of Health and Human Services (HHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability of the population of the United States. The annual National Health Interview Survey (NHIS) is a major source of general statistics on the health of the U.S. population and has been in the field continuously since 1957. This voluntary and confidential household-based survey collects demographic and health-related information from a nationally representative sample of households and noninstitutionalized, civilian persons throughout the country. NHIS data have long been used by government, academic, and private researchers to evaluate both general health and specific issues, such as smoking, diabetes, health care coverage, and access to health care. The survey is also a leading source of data for the Congressionally mandated ''Health US'' and related publications, as well as the single most important source of statistics to track progress toward HHS health objectives.

The NHIS sample adult and sample child questionnaires include annual core content that is scheduled to be fielded in the survey every year, rotating content that is fielded periodically, emerging content to address new topics of growing interest, and sponsored content that is fielded when external funding is available. Rotating sample adult and sample child core content on service utilization that was on the NHIS in 2023 will rotate off in 2024. Content on chronic pain and preventive services will also rotate off the sample adult core, and content on stressful life events will rotate off the sample child core. The 2024 sample adult rotating core will include items on health-related behaviors including smoking history and cessation, alcohol use, fatigue, physical activity, walking, doctor's advice to exercise, and sleep—content previously fielded on the 2022 NHIS. It will also include content on allergies and other health conditions and psychological distress, content that was previously fielded in 2021. The 2024 sample child rotating core will include questions on allergies and other conditions and health-related behaviors including physical activity, neighborhood characteristics, sleep, screen time, and height and weight which were previously fielded in 2022. Sponsored content on vision and hearing will be removed from both the sample adult and sample child questionnaires. Sponsored content on arthritis will be removed from the sample adult questionnaire. Sponsored content on social support and stressful life events will be removed from the sample child questionnaire. Sponsored content on cancer control and immunizations will remain, but the specific questions will change. Sponsored cancer control content on breast, prostate, and colorectal cancer screening, family history of cancers, and genetic testing for cancer risk will be removed from the sample adult questionnaire. Sponsored cancer control content in the 2024 NHIS sample adult questionnaire will focus on cigarette smoking history, lung cancer screening, environment for walking, and sun safety, using similar questions that were used in the 2020 NHIS. Sponsored content for the 2024 NHIS sample adult and sample child questionnaire will also include questions about taste and smell that are similar to content included in the 2021 NHIS. Sponsored content on social support and loneliness will also be added to the 2024 NHIS sample adult questionnaire. Emerging content on everyday discrimination, heightened vigilance, and mental health has been removed from the sample adult questionnaire. Emerging content on GLP–1 injectables has been added to the sample adult questionnaire.

Like in past years, and in accordance with the 1995 initiative to increase the integration of surveys within the DHHS, respondents to the 2021 NHIS will serve as the sampling frame for the Medical Expenditure Panel Survey conducted by the Agency for Healthcare Research and Quality. A subsample of NHIS respondents and/or members of commercial survey panels may be identified to participate in short, web-based methodological and cognitive testing activities to evaluate the questionnaire and/or inform the development of new rotating and sponsored content using web and/or mail survey tools. In addition, subsamples of NHIS respondents may be recontacted by web, phone, or mail to ask follow-up questions on topics that are already included in the NHIS. The NHIS-Teen is a follow-back survey of adolescents that was fielded from 2021 to 2023 and may be fielded again in 2025 and 2026 if funding is available. The NHIS also includes content that is used to benchmark estimates and calibrate survey weights from probability-based online commercial survey panels as part of the NCHS Rapid Surveys System.

CDC requests OMB clearance for three years, to collect data through 2026. The total estimated annualized burden is 39,192 hours. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of Respondents	Form Name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Adult Household Member	Household Roster	36,000	1	4/60
Sample Adult	Adult Questionnaire	33,000	1	50/60
Adult Family Member	Child Questionnaire	10,000	1	22/60
Adult Family Member	Methodological Projects	15,000	1	20/60
Sample Child	NHIS-Teen	667	1	15/60
Adult Family Member	Reinterview Survey	5,500	1	5/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–25084 Filed 11–13–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–24–22FZ]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''mChoice: Improving PrEP Uptake and Adherence among Minority MSM through Provider Training and Adherence Assistance in Two High Priority Settings'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on August 21, 2023, to obtain comments from the public and affected agencies. CDC received three comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

mChoice: Improving PrEP Uptake and Adherence among Minority MSM through Provider Training and Adherence Assistance in Two High Priority Settings—New—National Center for HIV, Viral Hepatitis, STD, TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC is requesting approval for three years for a data collection titled mChoice: Improving PrEP Uptake and Adherence among Minority MSM through Provider Training and Adherence Assistance in Two High Priority Settings. The purpose of the information collection is to implement and evaluate the effectiveness of mChoice, a clinic-based intervention designed to improve HIV preexposure prophylaxis (PrEP) adherence and persistence among young men who have sex with men (YMSM). The intervention targets both health providers and PrEP patients by providing evidence-based training for health providers to improve clinical knowledge and enhance provider communications with patients, and CleverCap, an electronic medication monitoring device and mobile phone application that provides health information and medication and appointment reminders for patients undergoing PrEP treatment.

Data collected through this study will be used to evaluate the mChoice intervention for YMSM. The information collected in this study will be used to: (1) describe real-world PrEP use including factors influencing selection and change of PrEP regimens; (2) understand and describe barriers and facilitators impacting the implementation of new PrEP modalities in clinical practice; (3) evaluate the feasibility and acceptability of the CleverCap mobile app among YMSM on PrEP; and (4) evaluate the feasibility and acceptability of implementing provider PrEP training.

The study will be carried out in four clinics in two locations, New York City, NY (2), and Birmingham, AL (2). For the cohort, convenience and referral-based sampling techniques will be used to identify and recruit participants. Participants will be young men between the ages of 18 and 39 who have sex with men; are using or initiating PrEP; and live in the New York City or Birmingham, AL area. Recruitment controls will ensure enrollment of at least 50% Black or African American or Hispanic or Latino men. Cohort participants will be recruited using a combination of approaches including print media posted in clinic waiting rooms, social media, referral, and in-person outreach.

For the provider training, convenience and referral-based sampling techniques will be used to identify and recruit a total of 20 healthcare providers from the four participating clinics. Providers will include, but are not limited to, medical doctors, nurse practitioners, physician associates, nurses, adherence counselors, pharmacists, and social workers. A provider can include any employee who discusses PrEP treatment with patients. Providers will be recruited using email invitations and flyers posted at the clinic sites.

To evaluate the effectiveness of the mChoice clinic intervention to increase PrEP adherence and persistence among YMSM, we will conduct a hybrid type II trial. Participants will be asked to complete computer assisted surveys at baseline and quarterly in-person visits. The surveys will assess participant attitudes, knowledge, behavior, and experiences related to PrEP, and risk factors for HIV acquisition. Participants will be given a CleverCap device to track medication dispensed from their prescription PrEP bottle. Participants will also be asked to download the companion CleverCap smartphone application. The application is designed to support PrEP adherence by providing health information, appointment reminders, medication reminders and other supportive information. Data collected from the app will include prescription adherence data from CleverCap and paradata to describe overall app use and use of app components. Data will also be collected from urine specimens and from electronic health records to describe the PrEP prescription regimen and any changes in PrEP regimen, evaluate PrEP adherence, and assess sexual risk through HIV and STI test results. To further examine the participant experience and intervention satisfaction, a subset of the cohort will be invited to participate in in-depth interviews. During the in-person interviews, participants will be asked to elaborate on intervention satisfaction; communications with providers; PrEP choices, switching and decision making; CleverCap and app use and acceptability; and PrEP knowledge.

CDC will also conduct a PrEP training for 20 healthcare providers from the four participating clinic sites. The provider training will include education on available PrEP modalities and will be aligned with the most recent CDC PrEP guidelines. To evaluate the training, providers will complete computer assisted self-administered pre- and post-training assessments to identify the potential impact of the training module on PrEP knowledge, attitudes, and practice. Six-months after completing the training, providers will be asked to complete a post-implementation interview to assess the impact of the intervention on the provider's work and interactions with their patients. Information to be collected from the interviews will include training satisfaction and opinions about the effect of the training on clinic operations, staff procedures, and client/patient responses; barriers to PrEP care; and attitudes and perceptions about PrEP. Healthcare providers will have the option to complete their interview in-person or using a web-based HIPAA-compliant platform. In addition to the training and provider-level assessments, at six-month intervals, clinic staff at each of the four participating clinic sites will complete a computer assisted clinic assessment to describe PrEP services implementation at the facility level. Information collected from the assessments will include facility hours and scheduling; patient services; PrEP services; PrEP prescribing information; and available PrEP options.

For the patient trial, we will enroll a total of 400 YMSM; over the three-year data collection period the estimated annual enrollment will be 134. It is expected that 50% of YMSM screened will meet study eligibility criteria and agree to join the study; therefore, we expect to screen 267 YMSM annually. The collection of initial screening information will take approximately 10 minutes to complete. Once enrolled, the collection of locator information will take an additional 10 minutes to complete. Participants will complete a baseline assessment which will take approximately 45 minutes to complete Participants will also complete follow-up assessments at 3-, 6-, 9-, 12- and 18-month time points. The follow-up assessments will take approximately 45 minutes to complete. Participants will receive their CleverCap and be asked to install the CleverCap app on their mobile phones. We estimate the CleverCap onboarding process will take approximately 10 minutes to complete. Use of the app after the initial install will be optional. A subset (30 total) of the YMSM participants will be invited to participate in an in-depth interview. The interview will take approximately 90 minutes to complete.

For the healthcare provider training, we will enroll a total of 20 healthcare providers. Over the 3-year data collection period, the estimated annual enrollment will be seven providers. It is expected that 50% of healthcare providers screened will meet study eligibility criteria and agree to join the study. Thus, we expect to screen 14 providers annually. The collection of initial screening information from the 14 providers will take approximately 10 minutes to complete. The collection of locator information from enrolled participants will take an additional 10 minutes to complete. Provider participants will be asked to complete an assessment before and after the PrEP training. Each assessment will take approximately 30 minutes to complete. Providers will also be asked to take part in a 60-minute interview.

To evaluate the impact of the intervention at the facility level, every six months during the 36-month data collection period, each of the four participating clinic sites will complete the clinic assessment tool to describe PrEP services implementation at the facility level. The clinic assessment will be completed by a single member of the clinic staff at each clinic (four respondents total). Clinic-level assessments at baseline and study end are estimated to take 120 minutes to complete. Clinic-level assessments conducted at six-month intervals between the baseline and study end points are expected to take 90 minutes to complete.

CDC is requesting OMB approval for 2,210 total burden hours across three years of data collection. Participation of respondents is voluntary. There are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response
General Public—Adults	Patient Screener	267	1	10/60
General Public—Adults	Patient Locator Form	134	1	10/60
General Public—Adults	Patient Baseline Assessment	134	1	45/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response
General Public—Adults	Patient Quarterly Assessment	134	3	45/60
General Public—Adults	CleverCap App Setup	134	1	10/60
General Public—Adults	Patient Interview Guide	10	1	90/60
Health Practitioners	Provider Screener	14	1	10/90
Health Practitioners	Provider Locator Form	7	1	10/90
Health Practitioners	Provider Pre-Training Assessment	7	1	30/60
Health Practitioners	Provider Post-Training Assessment	7	1	30/60
Health Practitioners	Provider Interview Guide	7	1	60/60
Health Practitioners	Clinic Assessment Baseline and Final	4	1	120/60
Health Practitioners	Clinic Assessment Every Six Months	4	2	90/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–25081 Filed 11–13–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–24–0109]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Respiratory Protective Devices—42 CFR part 84'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on November 28, 2022 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Respiratory Protective Devices—42 CFR part 84 (OMB Control No. 0920–0109, Exp. 03/31/2024)—Revision—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The regulatory authority for the National Institute for Occupational Safety and Health (NIOSH) certification program for respiratory protective devices is found in the Mine Safety and Health Amendments Act of 1977 (30 U.S.C. 577a, 651 *et seq.,* and 657(g)) and the Occupational Safety and Health Act of 1970 (30 U.S.C. 3, 5, 7, 811, 842(h), 844). These regulations have, as their basis, the performance tests and criteria for approval of respirators used by millions of American construction workers, miners, painters, asbestos removal workers, fabric mill workers, and fire fighters.

Regulations of the Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC) also require the use of NIOSH Approved respirators. These regulations also establish methods for respirator manufacturers to submit respirators for testing under the regulation and have them certified as NIOSH Approved if they meet the criteria given in the above regulation. This data collection was formerly named Respiratory Protective Devices 30 CFR part 11 but in 1995, the respirator standard was moved to 42 CFR part 84.

NIOSH, in accordance with 42 CFR part 84: (1) issues certificates of approval for respirators which have met specified construction, performance, and protection requirements; (2) establishes procedures and requirements to be met in filing applications for approval; (3) specifies minimum requirements and methods to be employed by NIOSH and by applicants in conducting inspections, examinations, and tests to determine effectiveness of respirators; (4) establishes a schedule of fees to be charged for testing and certification; and (5) establishes approval labeling requirements. Information is collected from those who request services under 42 CFR part 84 in order to properly establish the scope and intent of request.

Information collected from requests for respirator approval functions includes contact information and information about factors likely to affect respirator performance and use. Such information includes, but is not necessarily limited to, respirator design, manufacturing methods and materials, quality assurance plans and procedures, and user instruction and draft labels, as specified in the regulation.

The main instrument for data collection for respirator approval functions is the Standard Application Form for the Approval of Respirators (SAF), currently Version 9. Respirator manufacturers are the respondents (estimated to average 140 each year) and upon completion of the SAF, their requests for approval are evaluated. A total of 375 applications were submitted in CY2019, which preceded the surge in application received in conjunction with the COVID–19 pandemic. The applications are submitted, at will, and taking into account both historical conditions as well as the current situation, our prediction of the number of respondents each year for the next three years is 140. A $200 fee is required for each application. Respondents requesting respirator approval or certain extensions of approval are required to submit additional fees for necessary testing and evaluation as specified in 42 CFR parts 84.20–22, 84.66, 84.258 and 84.1102. Applicants are required to provide test data that shows that the manufacturer is able to ensure that the respirator is capable of meeting the specified requirements in 42 CFR part 84. The requirement for submitted test data is likely to be satisfied by standard testing performed by the manufacturer and is not required to follow the relevant NIOSH Standard Test Procedures. As additional testing is not required, providing proof that an adequate test has been performed is limited to providing existing paperwork.

The secondary instruments for data collection for respirator approval functions are instruments used to collect data from human participants who are serving as test fixture surrogates to perform tests while wearing the respirator being evaluated. Such instruments are completed by the human participant or test operator and are limited to specific information required for the test.

Approvals under 42 CFR part 84 offer corroboration that approved respirators are produced to certain quality standards. Although 42 CFR part 84 Subpart E prescribes certain quality standards, it is not expected that requiring approved quality standards will impose an additional cost burden over similarly effective quality standards that are not approved under 42 CFR part 84. Manufacturers with current approvals are subject to site audits by the Institute or its agents. Audits may occur periodically (typically every second year), or because of a reported issue. Approximately, 50% of the sites are audited each year, each having a primary point of contact. It is estimated that the average number of site audits over the next three years will be 85.

CDC requests OMB approval for an additional three years of data collection. The estimated annual burden hours are 131,059.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Business or other for-profit	Standard application form	140	4	229
	Request manufacturing code	10	1	30/60
	Site audits, Part 1	85	1	30/60
	Site audits, Part 2	85	1	9/60
	Site audits (completed for each corrective action)	70	2	16
Member of general public	Information sheet (initial participant visit only—contact info)	10	1	9/60
	Informed consent (annually, all test participants)	40	1	15/60
	Health and wellness screening (annually, all test participants)	40	1	15/60
	Health and wellness screening (each test, fit testing)	40	20	6/60
	Health and wellness screening (each test, man testing)	10	10	15/60
	Data collection form (man testing)	10	10	45/60
	Capacity test	10	1	6/60
	Communication Tests	10	1	2
	Donning test	10	1	1
	Fit test STP 5_5.1_6	14	20	9/60
	Fit tests STP–9 and 10	14	20	9/60
	Fogging test	10	1	30/60
	LRPL_Bitrex_Donning	38	1	1
	Performance Test	10	1	1
	Sound level STP–30_STP–111	25	2	6/60
	Stressors	10	1	1
	Test 118	10	25	30/60
	Test 147	10	4	9/60
	Wearability test	10	1	18/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–25083 Filed 11–13–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–24–0728; Docket No. CDC–2023–0091]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled *National Notifiable Diseases Surveillance System.* This data collection provides the official source of statistics in the United States for nationally notifiable disease conditions.

DATES: CDC must receive written comments on or before January 16, 2024.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0091 by either of the following methods:

• *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

National Notifiable Diseases Surveillance System (OMB Control No. 0920–0728, Exp. 3/31/2026)—Revision—Office of Public Health Data, Surveillance, and Technology (OPHDST), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Public Health Services Act (42 U.S.C. 241) authorizes CDC to disseminate nationally notifiable condition information. The National Notifiable Diseases Surveillance System (NNDSS) is based on data collected at the state, territorial and local levels because of legislation and regulations in those jurisdictions that require health care providers, medical laboratories, and other entities to submit health-related data on reportable conditions to public health departments. These reportable conditions, which include infectious and non-infectious diseases, vary by jurisdiction depending upon each jurisdiction's health priorities and needs. Each year, the Council of State and Territorial Epidemiologists (CSTE), supported by CDC, determines which reportable conditions should be designated nationally notifiable or under standardized surveillance.

CDC requests a three-year approval for a Revision for the NNDSS (OMB Control No. 0920–0728, Expiration Date 03/31/2026). This Revision includes requests for approval to: (1) receive case notification data for Cronobacter and Ehrlichiosis, new notifiable conditions; (2) receive case notification data for Congenital cytomegalovirus infection and Toxoplasmosis, new conditions under standardized surveillance; and (3) receive new disease-specific data elements for Cronobacter, Hansen's Disease (Leprosy,) and Leptospirosis.

The NNDSS currently facilitates the submission and aggregation of case notification data voluntarily submitted to CDC from 60 jurisdictions: public health departments in every U.S. state; New York City; Washington DC; five U.S. territories (American Samoa, the Commonwealth of Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands); and three freely associated states (Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau). This information is shared across jurisdictional boundaries and both surveillance and prevention and control activities are coordinated at regional and national levels.

Approximately 90% of case notifications are encrypted and submitted to NNDSS electronically from already existing databases by automated electronic messages. When automated transmission is not possible, case notifications are faxed, emailed, uploaded to a secure network or entered into a secure website. All case notifications that are faxed or emailed are done so in the form of an aggregate weekly or annual report, not individual cases. These different mechanisms used to send case notifications to CDC vary by the jurisdiction and the disease or condition. Jurisdictions remove most personally identifiable information (PII) before data are submitted to CDC, but some data elements (*e.g.,* date of birth, date of diagnosis, county of residence) could potentially be combined with other information to identify individuals. Private information is not disclosed unless otherwise compelled by law, and all data are treated in a secure manner consistent with the technical, administrative, and operational controls required by the Federal Information Security Management Act of 2002 (FISMA) and the 2010 National Institute of Standards and Technology (NIST) Recommended Security Controls for Federal Information Systems and Organizations. Weekly tables of nationally notifiable diseases are available through CDC WONDER and *www.data.cdc.gov.* Annual summaries of finalized nationally notifiable disease data are published on CDC WONDER and *www.data.cdc.gov* and disease-specific data are published by individual CDC programs.

The burden estimates include the number of hours that the public health department uses to process and send case notification data from their jurisdiction to CDC. Specifically, the burden estimates include separate burden hours incurred for automated and non-automated transmissions, separate weekly burden hours incurred for modernizing surveillance systems as part of CDC's Data Modernization Initiative (DMI) implementation, separate burden hours incurred for annual data reconciliation and submission, and separate one-time burden hours incurred for the addition of new diseases and data elements. The burden estimates for the one-time burden for reporting jurisdictions are for the addition of case notification data for Cronobacter and Ehrlichiosis, new notifiable conditions; the addition of case notification data for Congenital cytomegalovirus infection and Toxoplasmosis, new conditions under standardized surveillance; and the addition of new disease-specific data elements for Cronobacter, Hansen's Disease (Leprosy) and Leptospirosis.

Because there were fewer disease-specific data elements added in this Revision, the total burden hours decreased from 18,594 to 18,414. CDC requests OMB approval for an estimated 18,414 annual burden hours from the 257 respondents.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
States	Weekly (Automated)	50	52	20/60	867
States	Weekly (Non-automated)	10	52	2	1,040
States	Weekly (DMI Implementation)	50	52	4	10,400
States	Annual	50	1	75	3,750
States	One-time Addition of Diseases and Data Elements.	50	1	3	150
Territories	Weekly (Automated)	5	52	20/60	87
Territories	Weekly, Quarterly (Non-automated)	5	56	20/60	93
Territories	Weekly (DMI Implementation)	5	52	4	1,040
Territories	Annual	5	1	5	25
Territories	One-time Addition of Diseases and Data Elements.	5	1	3	15
Freely Associated States	Weekly (Automated)	3	52	20/60	52
Freely Associated States	Weekly, Quarterly (Non-automated)	3	56	20/60	56
Freely Associated States	Annual	3	1	5	15
Freely Associated States	One-time Addition of Diseases and Data Elements.	3	1	3	9
Cities	Weekly (Automated)	2	52	20/60	35
Cities	Weekly (Non-automated)	2	52	2	208
Cities	Weekly (DMI Implementation)	2	52	4	416
Cities	Annual	2	1	75	150
Cities	One-time Addition of Diseases and Data Elements.	2	1	3	6
Total					18,414

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–25088 Filed 11–13–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10552]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our

burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by January 16, 2024.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *https://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number:__, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10552 Implementation of Medicare Programs;—Medicare Promoting Interoperability Program

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Implementation of Medicare Programs;—Medicare Promoting Interoperability Program; *Use:* The Centers for Medicare & Medicaid Services (CMS) is requesting approval to collect information from eligible hospitals and critical access hospitals (CAHs). We have finalized changes to this program as discussed in the FY 2024 Inpatient Prospective Payment System (IPPS)/Long-term Care Hospital Prospective Payment System (LTCH PPS) final rule. This is a revision of the information collection request.

The American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5) was enacted on February 17, 2009. Title IV of Division B of the Recovery Act amended Titles XVIII and XIX of the Social Security Act (the Act) by establishing incentive payments to eligible professionals (EPs), eligible hospitals and CAHs, and Medicare Advantage (MA) organizations participating in the Medicare and Medicaid programs that adopt and successfully demonstrate meaningful use of certified EHR technology (CEHRT). These Recovery Act provisions, together with Title XIII of Division A of the Recovery Act, may be cited as the ''Health Information Technology for Economic and Clinical Health Act'' or the ''HITECH Act.''

The HITECH Act created incentive programs for EPs, eligible hospitals including CAHs, and MA organizations in the Medicare Fee-for-Service (FFS), and Medicaid programs that successfully demonstrated meaningful use of CEHRT. In their first payment year, Medicaid EPs, eligible hospitals including MA organizations and CAHs could adopt, implement, or upgrade to certified EHR technology. It also allowed for negative payment adjustments in the Medicare FFS and MA programs starting in 2015 for EPs, eligible hospitals including MA organizations and CAHs participating in Medicare that are not meaningful users of CEHRT. The Medicaid Promoting Interoperability Program did not authorize negative payment adjustments, but its participants were eligible for incentive payments until December 31, 2021, when the program ended.

In CY 2017, we began collecting data from eligible hospitals and CAHs to determine the application of the Medicare payment adjustments. This information collection was also used to make incentive payments to eligible hospitals in Puerto Rico from 2016 through 2021. At this time, Medicare eligible professionals no longer reported to the EHR Incentive Program, as they began reporting under the Merit-based Incentive Payment System's (MIPS) Promoting Interoperability Performance Category. In 2019, the EHR Incentives Program for eligible hospitals and CAHs was subsequently renamed the Medicare Promoting Interoperability Program. In subsequent years, we have focused on balancing reporting burden for eligible hospitals and CAHs while also implementing changes designed to incentivize the advanced use of CEHRT to support health information exchange, interoperability, advanced quality measurement, and maximizing clinical effectiveness and efficiencies.

In the FY 2024 IPPS/LTCH PPS final rule, we finalized the following policy changes for eligible hospitals and CAHs that attest to CMS under the Medicare Promoting Interoperability Program. None of the policies we finalized will affect the information collection burden: (i) to adopt three electronic clinical quality measures (eCQMs) beginning with the CY 2025 reporting period: (1) Hospital Harm—Pressure Injury eCQM; (2) Hospital Harm—Acute Kidney Injury eCQM; and (3) Excessive Radiation Dose or Inadequate Image Quality for Diagnostic Computed Tomography (CMT) in Adults eCQM; (ii) to modify the Safety Assurance Factors for EHR Resilience (SAFER) Guides measure to require eligible hospitals and CAHs to submit a ''yes'' attestation to fulfill the measure beginning with the EHR reporting period in CY 2024; and (iii) to establish an EHR reporting period of a minimum of any continuous 180-day period in CY 2025. *Form Number:* CMS–10552 (OMB control number: 0938–1278); *Frequency:* Annually; *Affected Public:* State, Local or Private Government; Business and for-profit and Not-for-profit; *Number of*

Respondents: 4,500; *Total Annual Responses:* 4,500; *Total Annual Hours:* 29,625. (For policy questions regarding this collection, contact Jessica Warren at 410–786–7519.)

Dated: November 8, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–25059 Filed 11–13–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Rural Health Information Clearinghouse Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Announcing Funding Supplement for National Rural Health Information Clearinghouse Program recipient.

SUMMARY: HRSA provided supplemental award funds to the National Rural Health Information Clearinghouse Program recipient to develop toolkits and other resources that address strategies to promote rural community health.

FOR FURTHER INFORMATION CONTACT: Sarah Scott, Federal Office of Rural Health Policy, HRSA, at *sscott2@hrsa.gov* and (301) 287–2619.

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: The University of North Dakota.

Amount of Non-Competitive Award: One award for $485,000.

Project Period: June 1, 2023, to May 31, 2024.

CFDA Number: 93.223.

Award Instrument: Supplement.

Authority: Social Security Act 711(b) (42 U.S.C. 912(b)).

TABLE 1—RECIPIENTS AND AWARD AMOUNTS

Grant No.	Award recipient name	City, State	Supplemental award amount
U56RH05539	University of North Dakota	Grand Forks, ND	$485,000

Justification: This funding will provide a one-time supplement to the University of North Dakota via the National Rural Health Information Clearinghouse Program. This supplement will allow the University of North Dakota to build on past and ongoing projects supported by HRSA to improve health care in rural areas by serving as a primary resource for information, opportunities, and tools related to rural health. The supplement will allow the University of North Dakota to create new toolkits and resources on important topics related to rural community health. This builds upon the planned work within the scope of its existing award.

Carole Johnson,

Administrator.

[FR Doc. 2023–25068 Filed 11–13–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, Maryland 20857; (301) 443–6593, or visit our website at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on September 1, 2023, through September 30, 2023. This list provides the name of the petitioner, city, and state of vaccination (if unknown then the city and state of the person or attorney filing the claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Health Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, Maryland 20857. The Court's caption (Petitioner's Name v. Secretary of HHS) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of Title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Carole Johnson,

Administrator.

List of Petitions Filed

1. Krista Wilson, Lexington, Kentucky, Court of Federal Claims No: 23–1513V
2. Cynthia Lyles, Jacksonville, Florida, Court of Federal Claims No: 23–1514V
3. Thomas Pollock, Dallas, Texas, Court of Federal Claims No: 23–1516V
4. Gary Kastler, Orwell, New York, Court of Federal Claims No: 23–1517V
5. Keith Misner, King of Prussia, Pennsylvania, Court of Federal Claims No: 23–1520V
6. Brenda Korfin, Waco, Texas, Court of Federal Claims No: 23–1521V
7. Kristin Fauntleroy, Boston, Massachusetts, Court of Federal Claims No: 23–1522V
8. Rebecca Richardson, Bothell, Washington, Court of Federal Claims No: 23–1523V
9. Melissa Swanson, Pittsburgh, Pennsylvania, Court of Federal Claims No: 23–1524V
10. Robert Poploski, Boston, Massachusetts, Court of Federal Claims No: 23–1525V
11. Ruth Parulis, Waterford, Michigan, Court of Federal Claims No: 23–1526V
12. Linda D'Ambrosio, Boston, Massachusetts, Court of Federal Claims No: 23–1527V
13. Gavin Sherman, Los Angeles, California, Court of Federal Claims No: 23–1529V
14. Krista Davidson, North Liberty, Iowa, Court of Federal Claims No: 23–1530V
15. Bonnie Albano on behalf of L. A., Morristown, New Jersey, Court of Federal Claims No: 23–1531V
16. Clifford Woodland, Black River Falls, Wisconsin, Court of Federal Claims No: 23–1532V
17. Victoria Pipp on behalf of T. P., Alpine, Texas, Court of Federal Claims No: 23–1533V
18. Robert M. Anderson, Jr., Boscobel, Wisconsin, Court of Federal Claims No: 23–1534V
19. Diane Barry, Boston, Massachusetts, Court of Federal Claims No: 23–1537V
20. Rosa Asous-Romney, Dover, Delaware, Court of Federal Claims No: 23–1540V
21. Elizabeth Starkey, Naperville, Illinois, Court of Federal Claims No: 23–1541V
22. Brooklyn Grace Norwood, Salina, Kansas, Court of Federal Claims No: 23–1542V
23. Hugh Gregory, Memphis, Tennessee, Court of Federal Claims No: 23–1543V
24. Norma Alvisuriz, Boston, Massachusetts, Court of Federal Claims No: 23–1545V
25. Shannon Roberts, New Orleans, Louisiana, Court of Federal Claims No: 23–1546V
26. Deborah Dapkus, Dresher, Pennsylvania, Court of Federal Claims No: 23–1547V
27. Cynthia Brandt on behalf of David M. Taylor, Deceased, Westlake, Ohio, Court of Federal Claims No: 23–1549V
28. Nicole Betts, Brewer, Maine, Court of Federal Claims No: 23–1550V
29. Sara Kinsey, Burlingame, California, Court of Federal Claims No: 23–1553V
30. Charles Esparza, Boston, Massachusetts, Court of Federal Claims No: 23–1555V
31. Veronika Sweitzer on behalf of Z. L. S., Richmond, Virginia, Court of Federal Claims No: 23–1556V
32. Allen Washuleski, Houghton, Michigan, Court of Federal Claims No: 23–1557V
33. Emma Krausert, Scottsdale, Arizona, Court of Federal Claims No: 23–1559V
34. Diane Hiatt, Honolulu, Hawaii, Court of Federal Claims No: 23–1560V
35. Jennifer Rich, Dallas, Texas, Court of Federal Claims No: 23–1561V
36. Fadia Louala, Phoenix, Arizona, Court of Federal Claims No: 23–1562V
37. Jonathan Schneider, Ypsilanti, Michigan, Court of Federal Claims No: 23–1564V
38. Daniel Shevitz, Los Alamos, New Mexico, Court of Federal Claims No: 23–1565V
39. Luis Tan, Phoenix, Arizona, Court of Federal Claims No: 23–1566V
40. Brett Merrill, Provo, Utah, Court of Federal Claims No: 23–1567V
41. Kent Blad, Provo, Utah, Court of Federal Claims No: 23–1570V
42. Wendy Hightower, Englewood, California, Court of Federal Claims No: 23–1571V
43. Maria Villanueva, Antioch, California, Court of Federal Claims No: 23–1572V
44. Michael Greim, Downingtown, Pennsylvania, Court of Federal Claims No: 23–1573V
45. Cynthia Rains, Fort Worth, Texas, Court of Federal Claims No: 23–1574V
46. Luis Guzman, Tucson, Arizona, Court of Federal Claims No: 23–1575V
47. Kashaf Zaidi, Hoffman Estates, Illinois, Court of Federal Claims No: 23–1576V
48. Lee Eulgen, Western Springs, Illinois, Court of Federal Claims No: 23–1577V
49. Patricia Eulgen, Western Springs, Illinois, Court of Federal Claims No: 23–1578V
50. Scott Sullivan, Chicago, Illinois, Court of Federal Claims No: 23–1579V
51. Artemio Guzman, Gurnee, Illinois, Court of Federal Claims No: 23–1581V
52. Vineet Gupta and Shalini Priti on behalf of P. G., San Diego, California, Court of Federal Claims No: 23–1582V
53. Oscar Dickey, Jr., Boston, Massachusetts, Court of Federal Claims No: 23–1583V
54. Jennifer Sigan, Memphis, Tennessee, Court of Federal Claims No: 23–1584V
55. Susan Brown, Madison, Alabama, Court of Federal Claims No: 23–1586V
56. Andrea Dinardo, Atlantic City, New Jersey, Court of Federal Claims No: 23–1587V
57. Griselda Cruz Burgos, Redmond, Oregon, Court of Federal Claims No: 23–1588V
58. Marysol Losada, New York, New York, Court of Federal Claims No: 23–1589V
59. Tracy Eurey, Winston Salem, North Carolina, Court of Federal Claims No: 23–1590V
60. Alicia Ekstrom, Findlay, Ohio, Court of Federal Claims No: 23–1591V
61. Corleen Simmons, Bloomington, Minnesota, Court of Federal Claims No: 23–1592V
62. Kashaf Zaidi, Hoffman Estates, Illinois, Court of Federal Claims No: 23–1593V
63. Artemio Guzman, Gurnee, Illinois, Court of Federal Claims No: 23–1594V
64. Sarah Jasper, Iowa City, Iowa, Court of Federal Claims No: 23–1596V
65. Laura Healy, Thousand Oaks, California, Court of Federal Claims No: 23–1597V
66. Johanna Bravo, Narragansett, Rhode Island, Court of Federal Claims No: 23–1599V
67. Delonda Giles, Burleson, Texas, Court of Federal Claims No: 23–1602V
68. Carol McNulty, Beverly Hills, California, Court of Federal Claims No: 23–1603V
69. Traci Brakefield, Woodridge, Illinois, Court of Federal Claims No: 23–1604V
70. Evelyn Haney, Knoxville, Tennessee, Court of Federal Claims No: 23–1605V
71. Sandra Puckly, Corry, Pennsylvania, Court of Federal Claims No: 23–1607V
72. David Ryley, M.D., Boston, Massachusetts, Court of Federal Claims No: 23–1609V

73. Kathleen Staub, Dresher, Pennsylvania, Court of Federal Claims No: 23–1611V
74. Shireesha Eedunuru on behalf of R. R. K., Sugarland, Texas, Court of Federal Claims No: 23–1613V
75. Anna Hoffman, Summit, Wisconsin, Court of Federal Claims No: 23–1614V
76. Sarah Leah Ganzweig, New York, New York, Court of Federal Claims No: 23–1615V
77. Adi Eminente, Los Angeles, California, Court of Federal Claims No: 23–1616V
78. Nancy Hodges, Fresno, California, Court of Federal Claims No: 23–1617V
79. Debora Strader, Escondido, California, Court of Federal Claims No: 23–1619V
80. Dairinn Finn, Olean, New York, Court of Federal Claims No: 23–1620V
81. Gabrielle Rawnsley, Charleston, New Hampshire, Court of Federal Claims No: 23–1621V
82. James A. Bristol, Jr., McKinney, Texas, Court of Federal Claims No: 23–1622V
83. Jamie Whitehouse, Helena, Montana, Court of Federal Claims No: 23–1623V
84. Christal Hanson, Boston, Massachusetts, Court of Federal Claims No: 23–1624V
85. Karen Bergin, New London, Connecticut, Court of Federal Claims No: 23–1625V
86. Amanda Page, Louisburg, North Carolina, Court of Federal Claims No: 23–1626V
87. Nazeer Lotfi-Fard, Avon, Ohio, Court of Federal Claims No: 23–1627V
88. Travis Rian, Wellesley, Massachusetts, Court of Federal Claims No: 23–1628V
89. Eugene Hieger, Lexington, Kentucky, Court of Federal Claims No: 23–1630V
90. Wendy Wright, Lewiston, Idaho, Court of Federal Claims No: 23–1631V
91. Bruce A. Scott, Fort Recovery, Ohio, Court of Federal Claims No: 23–1632V
92. Kathleen Hicks, Mechanicsville, Virginia, Court of Federal Claims No: 23–1634V
93. Rebecca Fellows, Lebanon, New Hampshire, Court of Federal Claims No: 23–1636V
94. Natalie Gaines, Columbia, Maryland, Court of Federal Claims No: 23–1637V
95. Michael Todaro, Dresher, Pennsylvania, Court of Federal Claims No: 23–1638V
96. Nicole Schaefer, Charleston, South Carolina, Court of Federal Claims No: 23–1641V
97. Annie Murphy, Ann Arbor, Michigan, Court of Federal Claims No: 23–1642V
98. Kristena Rivera on behalf of L. R., Dresher, Pennsylvania, Court of Federal Claims No: 23–1644V
99. Kerri Stone on behalf of E. L., Lexington, South Carolina, Court of Federal Claims No: 23–1645V
100. Toni Rankin, Beverly Hills, California, Court of Federal Claims No: 23–1646V
101. Gregory Whitehouse, Boston, Massachusetts, Court of Federal Claims No: 23–1647V
102. Melvin J. Martin on behalf of Billy J. Martin, Deceased, Greensboro, North Carolina, Court of Federal Claims No: 23–1649V
103. James Brady, Boston, Massachusetts, Court of Federal Claims No: 23–1650V
104. Julio Castillo, South Jordan, Utah, Court of Federal Claims No: 23–1651V
105. Jesus Villahermosa, Gig Harbor, Washington, Court of Federal Claims No: 23–1652V
106. Theresa V. Barrows, Cambridge, Vermont, Court of Federal Claims No: 23–1653V
107. Grisel Escalera, Providence, Rhode Island, Court of Federal Claims No: 23–1654V
108. Margaret Carter, Dresher, Pennsylvania, Court of Federal Claims No: 23–1656V
109. Stacy Brown-Satterwhite, Greensboro, North Carolina, Court of Federal Claims No: 23–1658V
110. Jerilynn Vokurka, Phoenix, Arizona, Court of Federal Claims No: 23–1659V
111. Debra Legleiter, Harrison, Arkansas, Court of Federal Claims No: 23–1660V
112. Brenda Smull, Chandler, Arizona, Court of Federal Claims No: 23–1662V
113. Lois Blankenship on behalf of Carter Blankenship, Deceased, Crown Point, Indiana, Court of Federal Claims No: 23–1663V
114. Curtis Lovejoy, Altamont, Illinois, Court of Federal Claims No: 23–1664V
115. Evelyn Fisher, Bensalem, Pennsylvania, Court of Federal Claims No: 23–1665V
116. Mary Palmisano, New Brunswick, New Jersey, Court of Federal Claims No: 23–1666V
117. Alina Dennis, Chula Vista, California, Court of Federal Claims No: 23–1670V
118. Julie Brown, Libertyville, Illinois, Court of Federal Claims No: 23–1671V
119. Raymond Motyka, East Orange, New Jersey, Court of Federal Claims No: 23–1672V
120. Carl Bildner, Columbia, Missouri, Court of Federal Claims No: 23–1673V
121. Deborah Bagdazian, San Diego, California, Court of Federal Claims No: 23–1674V
122. Misty Fuller, Glenwood Springs, Colorado, Court of Federal Claims No: 23–1677V
123. Jeanne Carpenter, Glen Burnie, Maryland, Court of Federal Claims No: 23–1678V
124. John J. Reding, Jr., Seattle, Washington, Court of Federal Claims No: 23–1679V
125. Gina Goldmann, Islandia, New York, Court of Federal Claims No: 23–1681V
126. Bruce W, Blais, Jr., Providence, Rhode Island, Court of Federal Claims No: 23–1682V
127. Von-Ikenna Marie Tresna-Taylor, Fulton, Missouri, Court of Federal Claims No: 23–1687V
128. Kenneth Berard, Vancouver, Washington, Court of Federal Claims No: 23–1690V
129. Bradley McKinnon, Little Rock, Arkansas, Court of Federal Claims No: 23–1691V
130. Melinda Boards, Bowling Green, Kentucky, Court of Federal Claims No: 23–1692V
131. Dora D. Loiacono, West Caldwell, New Jersey, Court of Federal Claims No: 23–1693V

[FR Doc. 2023–25043 Filed 11–13–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; Preclinical Proof of Concept Studies for Rare Diseases (R21) Review Meeting.

Date: January 24–25, 2024.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Carol (Chang-Sook) Kim, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, MSC 4874 Bethesda, MD 20892, (301) 402–1744, *carol.kim@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: November 8, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–25070 Filed 11–13–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–22–233: Time-Sensitive Opportunities for Health Research.

Date: December 8, 2023.

Time: 11:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Wenjuan Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3154, Bethesda, MD 20892, (301) 480–8667, *wangw22@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 8, 2023.

Patricia B. Hansberger,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–25072 Filed 11–13–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Cancer Therapy Evaluation Program (CTEP) Branch and Support Contracts Forms and Surveys (NCI)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Michael Montello, Cancer Therapy Evaluation Program—DCTD, National Cancer Institute, 9609 Medical Center Drive, Rockville, Maryland 20850 or call non-toll-free number (240) 276–6080 or email your request, including your address to: *montellom@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION:

Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Cancer Therapy Evaluation Program (CTEP) Branch and Support Contracts Forms and Surveys (NCI), 0925–0753, Expiration Date 03/31/2026, REVISION, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: This is a request for OMB to approve the revised information collection, Cancer Therapy Evaluation Program (CTEP) Support Contracts Forms and Survey. It includes modifications to OMB-approved forms for the CTSU and CIRB and the addition of new forms for the CTSU, CIRB, and CTEP. The National Cancer Institute (NCI) CTEP and the Division of Cancer Prevention (DCP) fund an extensive national program of cancer research, sponsoring clinical trials in cancer prevention, symptom management, and treatment for qualified clinical investigators. As part of this effort, CTEP implements programs to register clinical site investigators and clinical site staff and to oversee the conduct of research at the clinical sites. CTEP and DCP also oversee two support programs, the NCI Central Institutional Review Board (CIRB) and the Cancer Trial Support Unit (CTSU). The combined systems and processes for initiating and managing clinical trials are termed the Clinical Oncology Research Enterprise (CORE) and represent an integrated set of information systems and processes that support investigator registration, trial oversight, patient enrollment, and clinical data collection. The information collected is required to ensure compliance with applicable federal regulations governing the conduct of human subjects' research (45 CFR 46 and 21 CRF 50), and when CTEP acts as the Investigational New Drug (IND) holder (Food and Drug Administration (FDA) regulations pertaining to the sponsor of clinical trials and the selection of qualified investigators under 21 CRF 312.53). Survey collections assess satisfaction and provide feedback to guide improvements with processes and technology.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 162,831 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
CTSU IRB/Regulatory Approval Transmittal Form (Attachment A01).	Health Care Practitioner	2444	12	2/60	978
CTSU IRB Certification Form (Attachment A02) ..	Health Care Practitioner	2444	12	10/60	4888

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Withdrawal from Protocol Participation Form (Attachment A03).	Health Care Practitioner	279	1	10/60	47
Site Addition Form (Attachment A04)	Health Care Practitioner	80	12	10/60	160
CTSU Request for Clinical Brochure (Attachment A06).	Health Care Practitioner	360	1	10/60	60
CTSU Supply Request Form (Attachment A07)	Health Care Practitioner	90	12	10/60	180
RTOG 0834 CTSU Data Transmittal Form (Attachment A10).	Health Care Practitioner	30	2	5/60	5
CTSU Patient Enrollment Transmittal Form (Attachment A15).	Health Care Practitioner	12	12	10/60	24
CTSU Transfer Form (Attachment A16)	Health Care Practitioner	360	2	10/60	120
CTSU OPEN Rave Request Form (Attachment A18).	Health Care Practitioner	30	21	10/60	105
CTSU LPO Form Creation (Attachment A19)	Health Care Practitioner	5	2	120/60	20
CTSU Site Form Creation and PDF (Attachment A20).	Health Care Practitioner	400	10	30/60	2000
CTSU PDF Signature Form (Attachment A21)	Health Care Practitioner	400	10	10/60	667
CTSU CLASS Course Setup Request Form (Attachment A22).	Health Care Practitioner	10	2	20/60	7
CTSU LPO Approval of Early Closure Form (Attachment A23).	Health Care Practitioner	2444	6	20/60	4888
International DTL Signing (Attachment 24)	Health Care Practitioner	29	1	10/60	5
NCI CIRB AA & DOR between the NCI CIRB and Signatory Institution (Attachment B01).	Participants	50	1	15/60	13
NCI CIRB Signatory Enrollment Form (Attachment B02).	Participants	50	1	15/60	13
CIRB Board Member Application (Attachment B03).	Board Member	100	1	30/60	50
CIRB Member COI Screening Worksheet (Attachment B08).	Board Members	100	1	15/60	25
CIRB COI Screening for CIRB meetings (Attachment B09).	Board Members	72	1	15/60	18
CIRB IR Application (Attachment B10)	Health Care Practitioner	80	1	60/60	80
CIRB IR Application for Exempt Studies (Attachment B11).	Health Care Practitioner	4	1	30/60	2
CIRB Amendment Review Application (Attachment B12).	Health Care Practitioner	400	1	15/60	100
CIRB Ancillary Studies Application (Attachment B13).	Health Care Practitioner	1	1	60/60	1
CIRB Continuing Review Application (Attachment B14).	Health Care Practitioner	400	1	15/60	100
Adult IR of Cooperative Group Protocol (Attachment B15).	Board Members	65	1	180/60	195
Pediatric IR of Cooperative Group Protocol (Attachment B16).	Board Members	15	1	180/60	45
Adult Continuing Review of Cooperative Group Protocol (Attachment B17) Protocol.	Board Members	275	1	60/60	275
Adult Amendment of Cooperative Group Protocol (Attachment B19).	Board Members	40	1	120/60	80
Pediatric Amendment of Cooperative Group Protocol (Attachment B20).	Board Members	25	1	120/60	50
Pharmacist's Review of a Cooperative Group Study (Attachment B21).	Board Members	50	1	120/60	100
Adult Expedited Amendment Review (Attachment B23).	Board Members	348	1	30/60	174
Pediatric Expedited Amendment Review (Attachment B24).	Board Members	140	1	30/60	70
Adult Expedited Continuing Review (Attachment B25).	Board Members	140	1	30/60	70
Pediatric Expedited Continuing Review (Attachment B26).	Board Members	36	1	30/60	18
Adult Cooperative Group Response to CIRB Review (Attachment B27).	Health Care Practitioner	30	1	60/60	30
Pediatric Cooperative Group Response to CIRB Review (Attachment B28).	Health Care Practitioner	5	1	60/60	5
Adult Expedited Study Chair Response to Required Modifications (Attachment B29).	Board Members	40	1	30/60	20
Reviewer Worksheet—Determination of UP or SCN (Attachment B31).	Board Members	400	1	10/60	67

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Reviewer Worksheet—CIRB Statistical Reviewer Form (Attachment B32).	Board Members	100	1	15/60	25
CIRB Application for Translated Documents (Attachment B33).	Health Care Practitioner	100	1	30/60	50
Reviewer Worksheet of Translated Documents (Attachment B34).	Board Members	100	1	15/60	25
Reviewer Worksheet of Recruitment Material (Attachment B35).	Board Members	20	1	15/60	5
Reviewer Worksheet Expedited Study Closure Review (Attachment B36).	Board Members	20	1	15/60	5
Reviewer Worksheet of Expedited IR (Attachment B38).	Board Members	5	1	30/60	3
Annual Signatory Institution Worksheet About Local Context (Attachment B40).	Health Care Practitioner	400	1	40/60	267
Annual Principal Investigator Worksheet About Local Context (Attachment B41).	Health Care Practitioner	1800	1	20/60	600
Study-Specific Worksheet About Local Context (Attachment B42).	Health Care Practitioner	4800	1	15/60	1200
Study Closure or Transfer of Study Review Responsibility (Attachment B43).	Health Care Practitioner	1680	1	15/60	420
Unanticipated Problem or Serious or Continuing Noncompliance Reporting Form (Attachment B44).	Health Care Practitioner	360	1	20/60	120
Change of Signatory Institution PI Form (Attachment B45).	Health Care Practitioner	120	1	20/60	40
Request Waiver of Assent Form (Attachment B46).	Health Care Practitioner	35	1	20/60	12
CIRB Waiver of Consent Request Supplemental Form (Attachment B47).	Health Care Practitioner	20	1	15/60	5
Review Worksheet CIRB Review for Inclusion of Incarcerated Participants (Attachment B48).	Board Members	20	1	60/60	20
Notification of Incarcerated Participant Form (Attachment B49).	Health Care Practitioner	20	1	20/60	7
Final Video Submission Posting Form (Attachment B50).	Health Care Practitioner	80	1	15/60	20
Unanticipated Problem or Serious or Continuing Noncompliance Application (Attachment B52).	Health Care Practitioner	20	1	30/60	10
CIRB Customer Satisfaction Survey (Attachment C04).	Participants	600	1	15/60	150
Follow-up Survey (Communication Audit) (Attachment C05).	Participants/ .... Board Members	300	1	15/60	75
CIRB Board Member Annual Assessment Survey (Attachment C07).	Board Members	60	1	15/60	15
Audit Scheduling Form (Attachment D01)	Health Care Practitioner	229	5	21/60	401
Preliminary Audit Finding Form (Attachment D02)	Health Care Practitioner	229	5	10/60	191
Audit Maintenance Form (Attachment D03)	Health Care Practitioner	158	5	9/60	119
Final Audit finding Report Form (Attachment D04).	Health Care Practitioner	110	11	1098/60	22143
Follow-up Form (Attachment D05)	Health Care Practitioner	44	7	27/60	139
Roster Maintenance Form (Attachment D06)	Health Care Practitioner	7	1	18/60	2
Final Report and CAPA Request Form (Attachment D07).	Health Care Practitioner	3	9	1800/60	810
NCI/DCTD/CTEP FDA Form 1572 for Annual Submission (Attachment E01).	Physician	26,500	1	15/60	6625
NCI/DCTD/CTE Biosketch (Attachment E02)	Physician; Health Care Practioner.	48,000	1	120/60	96000
NCI/DCTD/CTEP Financial Disclosure Form (Attachment E03).	Physician; Health Care Practioner.	48,000	1	15/60	12000
NCI/DCTD/CTEP Agent Shipment Form (ASF) (Attachment E04).	Physician	24,000	1	10/60	4000
NINT Registration Form?	Health Care Practitioner, Other.	1,000	1	60/60	1000
ISS Form	Physician	2,100	1	15/60	525
Basic Study Information Form (Attachment TBD)	Health Care Practioner	140	1	20/60	47
Totals	....	173,463	253,510	....	162,831

Dated: November 8, 2023.

Diane Kreinbrink,

Project Clearance Liaison, National Cancer Institute, National Institutes of Health.

[FR Doc. 2023–25022 Filed 11–13–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for the treatment of cancer. The outcome of the evaluation will provide information to internal NCI committees that will decide whether NCI should support requests and make available contract resources for development of the potential therapeutic to improve the treatment of various forms of cancer. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; OCT2023 Cycle 45 NExT SEP Committee Meeting.

Date: December 12, 2023.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To evaluate the NCI Experimental Therapeutics Program Portfolio.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Room 3A44, Bethesda, Maryland 20892 (Virtual Meeting).

Contact Persons: Barbara Mroczkowski, Ph.D., Executive Secretary, Discovery Experimental Therapeutics Program, National Cancer Institute, NIH, 31 Center Drive, Room 3A44, Bethesda, Maryland 20892, 301–496–4291, *mroczkoskib@mail.nih.gov.*

Toby Hecht, Ph.D., Executive Secretary, Development Experimental Therapeutics Program, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 3W110, Rockville, Maryland 20850, 240–276–5683, *toby.hecht2@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 8, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–25069 Filed 11–13–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–1066]

Recreational Boating Safety Projects, Programs, and Activities Funded Under Provisions of the Infrastructure Investment and Jobs Act; Fiscal Year 2023

ACTION: Notice.

SUMMARY: The Coast Guard is publishing this notice to satisfy a requirement of the Infrastructure Investment and Jobs Act that requires a detailed accounting of the projects, programs, and activities funded under the national recreational boating safety program provision of the Act be published annually in the **Federal Register**. This notice specifies the funding amounts the Coast Guard has committed, obligated, or expended during fiscal year 2023, as of September 30, 2023.

FOR FURTHER INFORMATION CONTACT: For questions on this notice please contact Mr. Jeff Decker, U.S. Coast Guard, Regulations Development Manager, (202) 372–1507 or mailto: *RBSInfo@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Background and Purpose

Since 1998, Congress has passed a series of laws providing funding for projects, programs, and activities funded under the national recreational boating safety program, which is administered by the U.S. Coast Guard. On November 15, 2021, the Infrastructure Investment and Jobs Act (Pub. L. 117–58, Sec. 28001) set aside funding for Coast Guard administration, which for fiscal year 2023 was $13.835 million. Of that, not less than $2.1 million shall be made available to ensure compliance with chapter 43 of title 46, U.S. Code, and not more than $1.5 million is available to conduct by grant or contract a survey of levels of recreational boating participation and related matters in the United States.

These funds are available to the Secretary from the Sport Fish Restoration and Boating Trust Fund (Trust Fund) established under 26 U.S.C. 9504(a) for payment of Coast Guard expenses for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. Amounts made available under this subsection remain available during the two succeeding fiscal years. Any amount that is unexpended or unobligated at the end of the three-year period during which it is available shall be withdrawn by the Secretary and allocated to the States in addition to any other amounts available for allocation in the fiscal year in which they are withdrawn or the following fiscal year.

Use of these funds requires compliance with standard Federal contracting rules with associated lead and processing times resulting in a lag time between available funds and spending. The total amount of funding transferred to the Coast Guard from the Trust Fund, and committed, obligated, and/or expended during fiscal year 2023 for each project is shown below.

Specific Accounting of Funds

The total amount of funding transferred to the Coast Guard from the Sport Fish Restoration and Boating Trust Fund and committed, obligated, and/or expended during fiscal year 2023 for each project is shown in the chart below.

Project	Description	Cost
46 U.S.C. 43 Compliance: Inspection Program/Boat Testing Program.	Provided for continuance of the national recreational boat compliance inspection program, which began in January 2001.	$2,484,350
46 U.S.C. 43 Compliance: Staff Salaries	Provided for 3 personnel to oversee manufacturer compliance with 46 U.S.C. 43 requirements.	558,743
46 U.S.C. 43 Compliance: Staff Travel	Provided for travel by employees of the Boating Safety Division to oversee manufacturer compliance with 46 U.S.C. 43 requirements.	66,009

Project	Description	Cost
Administrative Overhead	Provide for supplies and materials to support the RBS Program	58,485
Boating Accident Report Database (BARD) Web System.	Provided for maintaining the BARD Web System, which enables reporting authorities in the 50 States, five U.S. Territories, and the District of Columbia to submit their accident reports electronically over a secure Internet connection.	456,128
National Boating Safety Advisory Committee	Provided for travel performed by NBSAC members, meeting room costs and administrative costs to support the NBSAC.	17,751
Contract Personnel Support	Provided contract personnel to conduct boating safety-related research and analysis.	1,285,012
Grant Management Training	Provided to facilitate staff training on new grant management requirements.	53,726
Recreational Boating Safety Program Travel	Provided for travel by employees of the Boating Safety Division to gather background and planning information for new recreational boating safety initiatives.	168,419
Reimbursable Salaries	Provided for 18 personnel directly related to coordinating and carrying out the national recreational boating safety program.	3,776,451
National Recreational Boating Survey	Provided for collecting data to support the National Recreational Boating Survey.	1,500,000

Of the $13.835 million made available to the Coast Guard in fiscal year 2023, $0 has been committed, obligated, or expended and an additional $10.425 million of prior fiscal year funds have been committed, obligated, or expended, as of September 30, 2023. The remainder of the FY22 and FY23 funds made available to the Coast Guard (approximately $20.345 million) may be retained for the allowable period for the National Recreational Boating Survey, the expected reengineering of the Boating Accident and Reporting Database, and other projects, or it may be transferred into the pool of money available for allocation through the state grant program.

Authority

This notice is issued pursuant to 5 U.S.C. 552 and 46 U.S.C. 13107(c)(4).

Amy M. Beach,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2023–25025 Filed 11–13–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2023–0042]

Faith-Based Security Advisory Council

AGENCY: The Department of Homeland Security (DHS), The Office of Partnership and Engagement (OPE).

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The Faith-Based Security Advisory Council (FBSAC) will hold a hybrid meeting on Wednesday, November 29, 2023. The meeting will be open to the public.

DATES: The meeting will take place from 3:00 p.m. ET to 4:00 p.m. ET on Wednesday, November 29, 2023. Please note that the meeting may end early if the Council has completed its business.

ADDRESSES: The FBSAC meeting will be held via Zoom for Government and in-person at DHS Headquarters. Members of the public interested in participating may do so by following the process outlined below (see ''Public Participation''). At all other times during the meeting, the public will be in listen-only mode. Written comments can be submitted from November 15, 2023, to November 28, 2023. Comments must be identified by Docket No. DHS–2023–0042 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: FBSAC@hq.dhs.gov*. Include Docket No. DHS–2023–0042 in the subject line of the message.
- *Mail:* Sameer Hossain, Designated Federal Officer of Faith-Based Security Advisory Council, Office of Partnership and Engagement, Mailstop 0385, Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and ''DHS–2023–0042,'' the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may wish to review the Privacy and Security Notice found via a link on the homepage of *http://www.regulations.gov*.

Docket: For access to the docket to read comments received by the Council, go to *http://www.regulations.gov,* search ''DHS–2022–0055,'' ''Open Docket Folder'' and provide your comments.

FOR FURTHER INFORMATION CONTACT: Sameer Hossain, Designated Federal Officer, Faith-Based Security Advisory Council, Office of Partnership and Engagement, U.S. Department of Homeland Security at *FBSAC@hq.dhs.gov* or 202–891–2876.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under section 10(a) of the Federal Advisory Committee Act (FACA), Public Law 92–463 (5 U.S.C. appendix), which requires each FACA committee meeting to be open to the public unless the President, or the head of the agency to which the advisory committee reports, determines that a portion of the meeting may be closed to the public in accordance with 5 U.S.C. 552b(c).

The FBSAC provides organizationally independent, strategic, timely, specific, and actionable advice to the Secretary through the OPE Assistant Secretary, who serves as the DHS Faith-Based Organizations Security Coordinator on security and preparedness matters related to places of worship, faith communities, and faith-based organizations. The Council consists of members who are: faith-based organization security officials; faith-based organization leaders; faith leaders; state and local public safety, law enforcement, and emergency management leaders; and a representative from the Department of Justice or Federal Bureau of Investigation.

The agenda for the meeting is as follows: DHS senior leadership and FBSAC Chair and Vice Chair will provide opening remarks. Taskings will be assigned to the Council, followed by a moderated discussion. The Designated Federal Officer will provide an update on the implementation of recommendations from the June 6, 2023, FBSAC meeting. A brief discussion of the state of current affairs in the Middle East will take place. The meeting will adjourn at 4:00 p.m. ET.

Members of the public may register to participate in this Council teleconference via the following procedures. Each individual must provide their full legal name and email address no later than 5:00 p.m. ET on Tuesday, November 28, 2023, to Sameer Hossain of the Council via email to *FBSAC@hq.dhs.gov* or via phone at 202–891–2876. Members of the public who have registered to participate will be provided the conference call details after the closing of the public registration period and prior to the start of the meeting.

For information on services for individuals with disabilities, or to request special assistance, please email *FBSAC@hq.dhs.gov* by 5:00 p.m. ET on Friday, November 25, 2023. The FBSAC is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact Sameer Hossain at *FBSAC@hq.dhs.gov* or 202–891–2876 as soon as possible.

Dated: November 8, 2023.

Sameer Hossain,

Designated Federal Officer, Faith-Based Security Advisory Council, U.S. Department of Homeland Security.

[FR Doc. 2023–25066 Filed 11–13–23; 8:45 am]

BILLING CODE 9112–FN–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6382–N–01A]

Federal Housing Administration (FHA): Home Equity Conversion Mortgage (HECM) HECM for Purchase-Acceptable Monetary Investment Funding Sources and Interested Party Contributions; Extension of Comment Period and Correction

AGENCY: Office of the Assistant Secretary for Policy Development and Research, U.S. Department of Housing and Urban Development (HUD).

ACTION: Notice; extension of comment period; correction.

SUMMARY: The Department of the Housing and Urban Development (HUD) published a notice in the **Federal Register** of October 24, 2023, to inform members of the public and affected program participants of changes to the Federal Housing Administration's (FHA) Home Equity Conversion Mortgage (HECM) for Purchase program that HUD intends to make in a future update to HUD's Single Family Housing Policy Handbook. The notice provided an opportunity for public comment but did not include the necessary language to allow for submission of comment in the **Federal Register**. This notice corrects this error and extends the public comment period to allow thirty days to submit comments through the **Federal Register**.

DATES: The public comment period for the notice published in the **Federal Register** on October 24, 2023 (88 FR 73040) is extended from November 24, 2023 to December 14, 2023.

FOR FURTHER INFORMATION CONTACT: Mary Jo Sullivan, Acting Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 9266, Washington, DC 20410–9000, telephone number 202–402–2378 (this is not a toll-free number); email address *sffeedback@hud.gov.* HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of October 24, 2023, in FR Doc 2023–23429, on page 73040, in the third column, the following corrections are made:

1. On page 73040, in the third column, in the Dates caption, revise the **DATES** section to read as follows:

DATES: Comment Due Date: December 14, 2023.

2. On page 73040, in the third column, after the dates section, add a section to read as follows:

ADDRESSES: HUD invites interested persons to submit comments to the Office of the General Counsel, Regulations Division, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title and should contain the information specified in the ''Request for Comments'' section. There are two methods for submitting public comments.

1. *Electronic Submission of Comments.* Comments may also be submitted electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the website can be viewed by other commenters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

2. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at all Federal agencies, however, submission of comments by mail often results in delayed delivery. To ensure timely receipt, HUD recommends that comments be mailed at least two weeks in advance of the public comment deadline.

Aaron Santa Anna,

Associate General Counsel, Office of Legislation and Regulations.

[FR Doc. 2023–24985 Filed 11–13–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–82]

30-Day Notice of Proposed Information Collection; Housing Counseling Homeownership Initiative Notice of Funding Opportunity (HI NOFO); OMB Control No.: 2502–NEW

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

This notice replaces the notice HUD published on November 14, 2023.

DATES: *Comments Due Date:* December 14, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410; email *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Colette.Pollard@hud.gov;* telephone number (202) 402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on August 30, 2023 at 88 FR 59935.

A. Overview of Information Collection

Title of Information Collection: Housing Counseling Homeownership Initiative Notice of Funding Opportunity (HI NOFO).

OMB Approval Number: 2502–NEW.

OMB Expiration Date: None.

Type of Request: New collection.

Form Numbers: HUD–91045; HUD–424–B; HUD–50153; HUD–2880; SF–LLL; SF–424.

Description of the need for the information and proposed use: The HUD Office of Housing Counseling will use the information collected to objectively evaluate grant applicants on how well they will be able to meet the selection factors set forth in the new Homeownership Initiative Notice of Funding Opportunity, hereinafter HI–NOFO, based on their history of performance and on their responses to questions. The collection will also serve to monitor selected applicants or grantees to assess compliance and effectiveness. This collection of information is required for the award of the HI NOFO grant program in furtherance of HUD's mission to increase homeownership rates among historically underserved communities. The grant program looks to deliver measurable outcomes by awarding funds to HUD-approved Intermediaries, Multi-State Organizations, and State and Local government Housing Finance Agencies who have demonstrated experience providing culturally sensitive, linguistically appropriate pre- and post-purchase housing counseling. Selected agencies will provide independent, expert, and customized guidance to help underserved communities. The NOFO specific information is collected via the new form HUD–90145 (Homeownership Initiative Chart). All other forms that are part of this collection are mandatory OMB or HUD standard grant application forms.

This review is necessary to support HUD participating agencies who are seeking to increase the homeownership rate among historically underserved communities and stop or reverse the increasing homeownership gap resulting from the effects of the COVID–19 pandemic and resulting shortage of affordable homes within those communities. These agencies will provide targeted counseling, outreach to members of their communities as well as seek partnerships with other agencies to help individuals and families achieve sustainable homeownership, no matter their race, ethnicity, disability status, or other protected class.

Respondents: HUD-approved non-profit HUD National and Regional Intermediaries (Intermediaries), Multi-State Organizations (MSOs), and State Housing Finance Agencies (SHFAs).

Estimated Number of Respondents: 56.

Estimated Number of Responses: 341.

Frequency of Response: Annually.

Average Hours per Response: 8.7.

Total Estimated Burden: 2,968 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–25044 Filed 11–13–23; 8:45 am]

BILLING CODE 4210–67–P

INTER-AMERICAN FOUNDATION

Sunshine Act Meetings

TIME AND DATE: November 29, 2023, ET.; 10:30 a.m.–12:00 p.m.

PLACE: Via Zoom.

STATUS: Meeting of the Advisory Council, open to the public.

MATTERS TO BE CONSIDERED:

- Call to Order
- Overview of Meeting Rules by General Counsel
- FY23 in Review
- FY24 Priorities and Opportunities
- Ethics Training
- Adjournment

CONTACT PERSON FOR MORE INFORMATION: Nicole Stinson, Associate General Counsel, (202) 683–7117 or *nstinson@iaf.gov.*

For Dial-in Information Contact: Nicole Stinson, Associate General Counsel, *nstinson@iaf.gov.*

The Inter-American Foundation is holding this meeting under the Government in the Sunshine Act, 5 U.S.C. 552b.

Nicole Stinson,

Associate General Counsel.

[FR Doc. 2023–25176 Filed 11–9–23; 4:15 pm]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2023–0217; FXIA16710900000–234–FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

DATES: We must receive comments by December 14, 2023.

ADDRESSES: *Obtaining Documents:* The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *https://www.regulations.gov* in Docket No. FWS–HQ–IA–2023–0217.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: https://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2023–0217.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2023–0217; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Timothy MacDonald, by phone at 703–358–2185 or via email at *DMAFR@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *https://www.regulations.gov* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *https://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17.

III. Permit Applications

We invite comments on the following applications.

Applicant: International Crane Foundation, Baraboo, WI; Permit No. PER4959507

The applicant requests a permit to export biological samples derived from wild whooping crane (*Grus americana*) taken in Arkansas National Wildlife Refuge, Austwell, Texas, for the purpose of enhancing the propagation or survival of the species through scientific research. This notification is for a single export.

Applicant: Los Angeles Zoo, Los Angeles, CA; Permit No. PER4743691

The applicant requests a permit to export one live captive-bred giant otter (*Pteronura brasiliensis*) to Fundacion Rewilding Argentina, Buenos Aires, Argentina, for the purpose of enhancing the propagation or survival of the species. This notification is for a single export.

Applicant: The Wildcat Sanctuary, Sandstone, MN; Permit No. PER5170171

The applicant requests a permit to import two live captive-bred Bengal tigers (*Panthera tigris tigris*) from Mendoza, Argentina, for the purpose of enhancing the propagation or survival of the species. This notification is for a single import.

Applicant: Rancho Santa Ana Botanic Garden, Claremont, CA; Permit No. PER5068413

The applicant requests authorization to export and re-import nonliving museum specimens of endangered species previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Trophy Applicants

The following applicants request permits to import sport-hunted trophies of male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancing the propagation or survival of the species.

- Marianne Kelley, Oklahoma City, OK; Permit No. 37949D
- Donald Detweiler, Telford, PA; Permit No. PER4147647
- George Ready, Hernando, MS; Permit No. PER5176185
- James Frash, Naples, FL; Permit No. PER5176234
- Deborah Holland, New Market, AL; Permit No. PER3088762

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *https://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to *regulations.gov* and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Timothy MacDonald,

Government Information Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 2023–24987 Filed 11–13–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[23XD4523WU DS61100000 DWUE30000.000000 DX61140]

Environmental Justice Strategic Plan Draft Vision, Goals and Objectives

AGENCY: Office of the Secretary, Interior.

ACTION: Notice and request for comments.

SUMMARY: Pursuant to the Executive Order (E.O.) 14096, *Revitalizing our Nation's Commitment to Environmental Justice for All,* the Department of the Interior (Department) is updating its Environmental Justice Strategic Plan and soliciting feedback on its draft environmental justice vision, goals, and objectives (included in Supplemental Information). The Department is also soliciting feedback on priority actions and performance metrics the Department should evaluate to advance the draft environmental justice vision, goals, and objectives.

DATES: Interested persons are invited to provide oral feedback on the Department's draft environmental justice vision, goals, and objectives and priority actions or performance metrics the Department should evaluate to advance the draft environmental justice vision, goals, and objectives during one of three public virtual listening sessions:

Date	Time	Location	Registration link
November 30, 2023	3:00–4:30 p.m. ET	Virtual	*https://bit.ly/generalpublicsession1.*
November 30, 2023	6:30–8:00 p.m. ET	Virtual	*https://bit.ly/generalpublicsession2.*
December 1, 2023	3:00–4:30 p.m. ET	Virtual	*https://bit.ly/generalpublicsession3.*

Interested persons are also invited to provide written feedback. Consideration will be given to all comments received during the public listening sessions or postmarked by December 15, 2023. Please clearly indicate whether feedback is intended for the Department's draft vision, draft goals, and/or draft objectives, priority actions and performance metrics.

ADDRESSES:

Submitting Comments: Interested persons may submit written comments by one of the following methods:

1. *By email to: Environmental_Justice@ios.doi.gov.*

2. *By hard copy to:* Environmental Justice, U.S. Department of the Interior, Office of Environmental Policy and Compliance (MS–2629), 1849 C Street NW, Washington DC 20240.

Written submissions must include your name and reference the Department's Environmental Justice Strategic Plan. All feedback, including any personal information you provide, may be made public. Therefore, the Department cautions participants against providing information they do not want made available to the public or submitting materials that contain personal information (either about themselves or others).

Accessing Documents and Additional Information: You may access information on the Department's Environmental Justice program, information on the Environmental Justice Strategic Plan update, and the Department's current Environmental Justice Strategic Plan at the Department's environmental justice website at *https://www.doi.gov/oepc/resources/environmental-justice.*

FOR FURTHER INFORMATION CONTACT: Cheryl Kelly, Office of Environmental Policy and Compliance, at 202 208–7565 or by email at *cheryl_kelly@ios.doi.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

Background: Executive Order 14096 directs Federal agencies to develop an Environmental Justice Strategic Plan that will ''set forth the agency's vision, goals, priority actions, and metrics to address and advance environmental justice and to fulfill the directives of [the E.O.], including through the identification of new staffing, policies, regulations, or guidance documents'', as well as ''identify and address opportunities through regulations, policies, permits, or other means to improve accountability and compliance with any statute the agency administers that affects the health and environment of communities with environmental justice concerns.''

To advance environmental justice, the Department established an Environmental Justice Steering Committee, made up of representatives of the Department's bureaus and offices. The Environmental Justice Steering Committee's Policy Subcommittee developed the draft environmental justice vision, goals, and objectives on which feedback is being sought by evaluating the Department's existing 2016 Environmental Justice Strategic Plan, the Department's 2022–2026 Strategic Plan, recent Executive Orders, and input received from Departmental employees in feedback sessions. The Policy Subcommittee will evaluate all oral and written feedback received on the draft environmental justice vision, goals, and objectives, as well as potential actions and performance measures to develop the draft Environmental Justice Strategic Plan.

Listening Session Format: Listening sessions will be 90 minutes. The sessions will start with an overview and then interested persons will have the opportunity to provide feedback using a variety of engagement tools. If you require a reasonable accommodation to attend a listening session, please email: *Environmental_Justice@ios.doi.gov.*

Draft Environmental Justice Vision, Goals, and Objectives: The Department would appreciate comments on the following questions:

1. Do the draft environmental justice vision, strategic goals, and objectives provided in the table address your interests and concerns about the advancement of environmental justice by the Department? Why or why not?

2. What actions should the Department undertake to advance environmental justice?

3. What performance measures or metrics should the Department establish to monitor progress towards advancing environmental justice?

Draft Environmental Justice Vision
To provide outstanding management of the natural and cultural resources entrusted to us in a manner that is sustainable, equitable, accessible, and inclusive of all populations.
Draft Strategic Goal 1 and Objectives
Institutionalize environmental justice within the Department and establish accountability for decisionmakers and practitioners as they apply environmental justice principles in policies, budgeting, decisions, activities, and processes.
1.1 Increase our employees' awareness and understanding of environmental justice.
1.2 Solicit resources, support, and commitment from leadership to cultivate an enabling environment for their employees to advance environmental justice.
1.3 Expand our employees' capacity and skillsets to build their ability to advance environmental justice through their work.
1.4 Develop a structure to ensure that employees at all levels are held accountable for advancing environmental justice.
Draft Strategic Goal 2 and Objectives
Engage early and often with communities and Tribal Nations to support meaningful involvement, equitable decisions, better inform the Department's activities, and proactively address/involve environmental justice concerns.
2.1 Expand the Department's capacity to maintain and deepen relationships with communities and Tribal Nations.
2.2 Build skills and capacity among our employees to deliver intentional, anticipatory, respectful engagement.
2.3 Remove barriers and provide resources and opportunities for communities and Tribal Nations to engage with the Department.
2.4 Maintain and model an open and ongoing dialogue with communities and Tribal Nations about how their input is incorporated into our decisions.
Draft Strategic Goal 3 and Objectives
Identify, prevent, and mitigate environmental injustices, including adverse human health or environmental effects, in collaboration and coordination with communities and other partners.
3.1 Adjust actions, policies, programs, and program implementation to better account for environmental justice considerations to prevent injustices.
3.2 Actively address the impacts of historical environmental and health injustices.
3.3 Employ a whole-of-government approach to maximize benefits to and reduce burdens on communities and Tribal Nations.
3.4 Build new and deepen existing partnerships to both broaden and localize our engagement.
Draft Strategic Goal 4 and Objectives
Leverage funding, training, educational and professional opportunities to empower efforts to build and sustain healthy, environmentally, and economically sound communities.
4.1 Identify and remove barriers that prevent communities and Tribal Nations from accessing and executing opportunities.
4.2 Expand and improve technical assistance to communities and Tribal Nations.
4.3 Create new and amend existing opportunities for outreach, communication, and accessibility for communities and Tribal Nations, and aim to increase available funding when possible.
4.4 Work with communities and Tribal Nations to identify and deliver desired opportunities.
Draft Strategic Goal 5 and Objectives
Apply environmental justice principles in the Department's production, collection, and use of data, science, and research to benefit communities and better inform our decision making.
5.1 Identify data gaps and address those gaps.
5.2 Employ diverse sources, methodologies, and perspectives, including Indigenous Knowledges, across our activities, and apply related findings in the Department's decision-making.
5.3 Make the Department's research/data available and accessible to communities and Tribal Nations, as appropriate.
5.4 Abide by respectful, ethical research and data practices, including confidentiality and data sovereignty.

Eric Werwa,

Deputy Assistant Secretary—Policy and Environmental Management, Department's Environmental Justice Officer.

[FR Doc. 2023–24937 Filed 11–13–23; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decrees Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Clean Water Act (CWA), and the Oil Pollution Act (OPA)

On November 1, 2023, the Department of Justice lodged two proposed consent decrees with the United States District Court for the District of Oregon in the lawsuit entitled *United States of America et al.* v. *ACF Industries LLC, et al.,* Civil Action No. 3:23–cv–1603 (D. Or.).

The complaint asserts claims for natural resource damages by the United States on behalf of the National Oceanic and Atmospheric Administration and the Department of the Interior; the State of Oregon; the Confederated Tribes of the Grand Ronde Community of Oregon; the Confederated Tribes of Siletz Indians; the Confederated Tribes of the Umatilla Indian Reservation; the Confederated Tribes of the Warm Springs Reservation of Oregon; and the Nez Perce Tribe (collectively, the ''Natural Resource Trustees'') pursuant to the section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607(a); section 311 of the Clean Water Act (CWA), 33 U.S.C. 1321; section 1002(b) of the Oil Pollution Act (OPA), 33 U.S.C. 2702(b); the Oregon Hazardous Waste and Hazardous Materials Act, ORS section 465; and ORS section 468B.060.

The proposed consent decrees settle claims for natural resource damages caused by hazardous substances released from defendants' facilities along the Willamette River. Under the proposed consent decrees, the defendants will pay cash and/or purchase restoration credits in one or more restoration projects approved by the Natural Resource Trustees to create habitat for injured natural resources, including various species of fish and birds. Defendants also must make payments for the public's lost recreational use of the river, for monitoring of culturally significant plants and animals, and for reimbursement of the Natural Resource Trustees' costs. Restoration project developers also are parties to the consent decree under which some defendants purchase restoration credits in those projects. The restoration project developers are required to develop their restoration projects, permanently protect the restoration project sites, and arrange for long-term stewardship of each restoration project. The Natural Resource Trustees will provide defendants with covenants not to sue under the authorities listed in the complaint and proposed consent decree for specified natural resource damages.

The publication of this notice opens a period for public comment on the proposed Consent Decrees. Comments on the proposed Consent Decrees should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America et al.* v. *ACF Industries LLC, et al.,* D.J. Ref. No. 90–11–2–06787/2. All comments must be submitted no later than forty-five (45) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decrees may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decree/us-et-al-v-acf-industries-llc-et-al.* Please note that this website contains the corrected version of the cash-out consent decree but not the version originally lodged with the court. The corrected version of the cash-out consent decree adds a legal entity for one of the settling defendants that inadvertently was omitted but does not change the scope of the operations covered by the consent decree or the amounts to be paid under the consent decree. Please refer to the corrected version of the cash-out consent decree when submitting comments. We will provide a paper copy of the Consent Decrees upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $45.25 (without attachments) or $631.25 (with attachments) (25 cents per page reproduction cost) payable to the United States Treasury.

Kathryn C. Macdonald,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–25023 Filed 11–13–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Innovation and Opportunity Act; Native American Employment and Training Council

AGENCY: Employment and Training Administration, U.S. Department of Labor.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), as amended, and the Workforce Innovation and Opportunity Act (WIOA), notice is hereby given of the next meeting of the Native American Employment and Training Council (Council), as constituted under WIOA.

DATES: The meeting will begin at 1:30 p.m. (eastern daylight time) on Thursday, December 7, 2023, and continue until 4:30 p.m. The meeting will reconvene at 9 a.m., on Friday, December 8, 2023, and adjourn at 4 p.m. The period from 3 p.m. to 4 p.m., on December 8, 2023, is reserved for participation and comment by members of the public.

ADDRESSES: The meeting will be held in person at 200 Constitution Ave. NW, Washington, DC 20210, in conference room C–5515. The meeting will also be accessible virtually on the *Zoom.gov* platform. To join the meeting use the following URL: *https://www.zoomgov.com/j/1604160784?pwd=dHp3WUtzQ1dXM2NtVFRGS0hqUERHQT09.*

Meeting ID: 160 416 0784.

Passcode: 807557.

FOR FURTHER INFORMATION CONTACT: Nathaniel Coley, DFO, Division of Indian and Native American Programs, Employment and Training Administration, U.S. Department of Labor, Room S–4209, 200 Constitution Avenue NW, Washington, DC 20210. Telephone number (202) 693–4287 (VOICE) (this is not a toll-free number) or *coley.nathaniel.d@dol.gov.*

SUPPLEMENTARY INFORMATION: Council members and members of the public are encouraged to logon to *Zoom.gov* early to allow for connection issues and troubleshooting.

The meeting will be open to the public. Members of the public not present may submit a written statement by Friday, December 1, 2023, to be included in the record of the meeting. Statements are to be submitted to Nathaniel Coley, Designated Federal Officer (DFO), U.S. Department of Labor at *coley.nathaniel.d@dol.gov.* Persons who need special accommodations should contact Phillip Roulain at 703–209–5889 or *proulain@tribaltechllc.com* two business days before the meeting. The formal agenda will focus on the following topics: (1) Updates from the Employment and Training Administration, including implementation of Workforce Innovation and Opportunity Act programs, and status of previous NAETC recommendations; (2) Training and technical assistance updates and priorities; (3) NAETC workgroup updates; (4) updates on implementation of the 477 program; (5) Presentation on WIOA participants served and outcomes since the implementation of the Grantee Performance Management System (GPMS); (6) ETA/DINAP updates; and (7) public comment.

Brent Parton,

Principal Deputy Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2023–24981 Filed 11–13–23; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Representative of Miners, Notification of Legal Identity, and Notification of Commencement of Operations and Closing of Mines

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mine Safety and Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before December 14, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Michael Howell by telephone at 202–693–6782, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Identification of the miner representative, notification of mine owner and operator legal identity and notification of commencement of operations and closing of mines provide information to help ensure the health and safety of mine workers by identifying responsibility for mining operations. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 7, 2023 (88 FRN 37284).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Agency: DOL–MSHA.

Title of Collection: Representative of Miners, Notification of Legal Identity, and Notification of Commencement of Operations and Closing of Mines.

OMB Control Number: 1219–0042.

Affected Public: Businesses or other for-profits.

Number of Respondents: 9,595.

Frequency: On occasion.

Number of Responses: 9,595.

Annual Burden Hours: 1,823 hours.

Total Estimated Annual Other Costs Burden: $780.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2023–24998 Filed 11–13–23; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2023–0003]

National Advisory Committee on Occupational Safety and Health (NACOSH): Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of NACOSH meeting.

SUMMARY: The National Advisory Committee on Occupational Safety and Health (NACOSH) will meet December 12, 2023, in a hybrid format. Committee members will meet in person, while the public is invited to participate either in person or virtually via WebEx.

DATES: The NACOSH will meet from 10:00 a.m. to 4:00 p.m., ET, December 12, 2023.

ADDRESSES:

Submission of comments and requests to speak: Comments and requests to speak at the NACOSH meeting, including attachments, must be submitted electronically at *www.regulations.gov,* the Federal eRulemaking Portal by November 27, 2023. Comments must identify the docket number for this **Federal Register** notice (Docket No. OSHA–2023–0003). Follow the online instructions for submitting comments.

Registration: All persons wishing to attend the meeting, either in person or virtually, must register via the registration link on the NACOSH web page at *https://www.osha.gov/advisorycommittee/nacosh.* Upon registration, in-person attendees will receive directions for participation and virtual attendees will receive a WebEx link for remote access to the meeting. At this time, OSHA will be limiting in-person attendance to 25 members of the public.

Requests for special accommodations: Submit requests for special accommodations, including translation services, for this NACOSH meeting by November 27, 2023, to Ms. Christie Garner, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone: (202) 693–2246; email: *garner.christie@dol.gov.*

Instructions: All submissions must include the agency name and the OSHA docket number for this **Federal Register** notice (Docket No. OSHA–2023–0003). OSHA will place comments and requests to speak, including personal information, in the public docket, which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

Docket: To read or download documents in the public docket for this NACOSH meeting, go to *www.regulations.gov.* All documents in the public docket are listed in the index; however, some documents (*e.g.,* copyrighted material) are not publicly available to read or download through *www.regulations.gov.* All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general information about NACOSH: Ms. Lisa Long, Deputy Director, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone: (202) 693–2409; email: *long.lisa@dol.gov.*

Telecommunication requirements: For additional information about the telecommunication requirements for the meeting, please contact Ms. Christie Garner, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone: (202) 693–2246; email: *garner.christie@dol.gov.*

For copies of this **Federal Register** *Notice:* Electronic copies of this **Federal Register** notice are available at *www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available at OSHA's web page at *https://www.osha.gov/advisorycommittee/nacosh.*

SUPPLEMENTARY INFORMATION:

I. Background

NACOSH was established by section 7(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651, 656) to advise, consult with, and make recommendations to the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the OSH Act. NACOSH is a continuing advisory committee of indefinite duration.

NACOSH operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App.2), its implementing regulations (41 CFR part 102–3), and OSHA's regulations on NACOSH (29 CFR 1912.5 and 29 CFR part 1912a).

II. Meeting Information

Public attendance will be in a hybrid format, either in person or virtually via WebEx. Meeting information will be posted in the docket (Docket No. OSHA–2023–0003) and on the NACOSH web page, *https://www.osha.gov/advisorycommittee/nacosh,* prior to the meeting.

NACOSH will meet from 10:00 a.m. to 4:00 p.m., ET on December 12, 2023.

Meeting agenda: The tentative agenda for this meeting includes:

- Introduction of new members;
- OSHA Updates;
- NIOSH Update;
- NIOSH Mental Health for Healthcare Workers Campaign;
- Safety as a Core Value; and
- Whistleblower Discussion.

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by 29 U.S.C. 655(b)(1) and 656(b), 5 U.S.C. app. 2, 29 CFR parts 1912 and 1912a, and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary for Occupational Safety and Health.

[FR Doc. 2023–25071 Filed 11–13–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2023–0003]

National Advisory Committee on Occupational Safety and Health (NACOSH); Notice of Membership Appointments

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of NACOSH membership appointments.

SUMMARY: On November 1, 2023, the Acting Secretary of Labor appointed two members to serve on the National Advisory Committee on Occupational Safety and Health (NACOSH).

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Francis Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone (202) 693–1999, (TTY (877) 889–5627); email *meilinger.francis2@dol.gov.*

For general information: Ms. Lisa Long, Acting Deputy Director, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2409; email *long.lisa@dol.gov.*

For copies of this ***Federal Register*** *Notice:* Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available at OSHA's web page at *www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651, 656) established NACOSH to advise, consult with, and make recommendations to the Secretary of Labor and the Secretary of Health and Human Services (HHS) on matters relating to the administration of the OSH Act. NACOSH is a continuing advisory committee of indefinite duration.

NACOSH operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), its implementing regulations (41 CFR part 102–3), and OSHA's regulations on advisory committees and NACOSH (29 CFR parts 1912 and 1912a).

NACOSH is comprised of 12 members: four public representatives, two management representatives, two labor representatives, two occupational safety professional representatives, and two occupational health professional representatives (29 CFR 1912a.2). The Secretary of Labor appoints all of these members. However, the Secretary of HHS designates four of the representatives: two of the four public representatives and the two occupational health professional representatives. NACOSH members serve staggered two-year terms, unless the member becomes unable to serve, resigns, ceases to be qualified to serve, or is removed by the Secretary.

On July 31, 2023, OSHA published a request for nominations for two HHS designated NACOSH positions that would expire on November 15, 2023 (88 FR 49504). Specifically, OSHA requested nominations for:

- One (1) public representative (HHS); and
- One (1) occupational health professional representative (HHS).

OSHA handled the nominations consistent with the process identified in the FRN. The Acting Secretary of Labor proceeded with the appointment of individuals to two positions on November 1, 2023.

II. Appointment of Committee Members

OSHA received nominations of highly qualified individuals in response to the agency's request for nominations (88 FR 49504, July 31, 2023). The Acting Secretary appointed NACOSH members on the basis of their experience and competence in the field of occupational safety and health (29 CFR 1912a.2). The NACOSH members that the Acting Secretary appointed on November 1, 2023 with terms expiring on November 15, 2025 are:

HHS Designated Public Representative

- Cynthia Lewis, University of Arkansas for Medical Sciences, Health Policy & Management

HHS Designated Occupational Health Representative

- Bobbi Jo Hurst, Orthopedic Associates of Lancaster, PA.

Authority and Signature:

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by 29 U.S.C. 655(b)(1) and 656(b), 5 U.S.C. App. 2, and 29 CFR parts 1912 and 1912a.

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–24917 Filed 11–13–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Agency Information Collection Activities; Comment Request: Employment Navigator Data Collection and Matching

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Veterans' Employment and Training Service (VETS) is soliciting comments concerning a proposed authority to conduct the information collection request (ICR) titled, ''Employment Navigator Data Collection and Matching.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Comments must be submitted by January 2, 2024.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained at no cost by contacting Serge King by telephone at 202.693.2982 (this is not a toll-free number), or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Veterans' Employment and Training Service, Transition Assistance Program, 200 Constitution Ave NW, Room S1212, Washington DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Serge King by telephone at 202.693.2982 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

DOL seeks approval of a new information collection request (ICR) titled ''Employment Navigator Data Collection and Matching''. This request is for a ''common forms'' clearance process. There are three forms included in this ICR. The first form is a data collection mechanism for transitioning service members to provide general characteristics and background information as services are received from Employment Navigators. The second form includes additional data that is captured from government and non-government partners who will provide the service member, veteran, or spouse addition job seeker assistance after Employment Navigator data entry is complete. This form also includes any employment-related outcomes (*e.g.* job placement, job retention, and hourly wages earned) for each participant. The last form is a registration and validation form that all necessary partner entities must complete in order to be considered for partner status.

Authority: 44 U.S.C. 3506(c)(2)(A) authorizes this information collection. This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB 1205–0NEW.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.,* permitting electronic submission of responses).

Agency: DOL–VETS.

Type of Review: NEW.

Title of Collection: Employment Navigator Data Collection and Matching.

Forms: Employment Navigator Intake (VETS–NEW1); Employment Navigator Partner Intake (VETS–NEW2); Employment Navigator Partner Validation Input (VETS–NEW3).

OMB Control Number: 1205–0NEW.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 22,550.

Frequency: Annually.

Total Estimated Annual Responses: 22,550.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden Hours: 6,885 hours.

Total Estimated Annual Other Cost Burden: $204,425.25.

James D. Rodriguez,

Assistant Secretary for Veterans' Employment and Training Service.

[FR Doc. 2023–25000 Filed 11–13–23; 8:45 am]

BILLING CODE 4510–79–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 14, 2023. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314 or *ACApermits@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, at the above address, 703–292–4479.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2024–015

1. *Applicant:* Sarah Ruth, National Science Foundation, Office of Polar Programs, 2415 Eisenhower Ave., Alexandria, VA 22314

Activity for Which Permit is Requested: Enter Antarctic Specially Protected Area. The applicant seeks an Antarctic Conservation Act permit authorizing entry into Antarctic Specially Protected Areas (ASPA) in association with oversight and management of U.S. Antarctic Program science projects. The applicant proposes to enter specific ASPAs as needed to conduct site visits of various U.S. science teams working in those ASPAs. The applicant proposes to enter ASPAs on an as needed basis and would be accompanied within the ASPA at all times by the science project participants conducting work in that ASPA. No visits to ASPAs would occur if there is no U.S. Antarctic Program science project active in that ASPA.

Location: ASPA 106—Cape Hallett, Northern Victoria Land, Ross Sea; ASPA 113—Litchfield Island, Arthur Habor, Anvers Island; ASPA 121—Cape Royds, Ross Island; ASPA 124—Cape Crozier, Ross Island; ASPA 128—Western Shore of Admiralty Bay, King George Island; ASPA 131—Canada Glacier, Lake Fryxell, Taylor Valley; ASPA 139—Biscoe Point, Anvers Island; ASPA 149—Cape Shirreff and San Telmo Island, Livingston Island, South Shetland Islands; ASPA 155—Cape Evans, Ross Island; ASPA 172—Lower Taylor Glacier and Blood Falls, McMurdo Dry Valleys, Victoria Land; ASPA 173—Cape Washington and Silverfish Bay, Terra Nova Bay, Ross Sea; ASPA 176—Rosenthal Islands, Anvers Island.

Dates of Permitted Activities: December 15, 2023–March 31, 2024.

Permit Application: 2024–017

2. *Applicant:* Prash Karnik, Lindblad Expeditions, 96 Morton Street, New York, NY 10014

Activity for Which Permit is Requested: Enter Antarctic Specially Protected Area. The applicant seeks an Antarctic Conservation Act permit authorizing entry into Antarctic Specially Protected Areas (ASPA) in association with visits to historic huts in the Ross Sea region. All visits would be in accordance with the management plans for each ASPA.

Location: ASPA 155—Cape Evans, Ross Island; ASPA 157—Backdoor Bay, Cape Royds, Ross Island; ASPA 158—Hut Point, Ross Island; ASPA 159—Cape Adare, Borchgrevink Coast;

Dates of Permitted Activities: January 1, 2024–February 28, 2024.

Kimiko S Bowens-Knox,

Program Analyst, Office of Polar Programs.

[FR Doc. 2023–25003 Filed 11–13–23; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 14, 2023. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314 or *ACApermits@nsf.gov*.

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, at the above address, 703–292–4479.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR part 670), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2024–016

1. *Applicant:* Richard Boydon, Princess Cruise Line, 24305 Town Center Drive, Santa Clarita, CA 91355

Activity for Which Permit is Requested: Waste Management. The applicant proposes to operate small, battery-operated remotely piloted aircraft systems (RPAS) consisting, in part, of a quadcopter equipped with cameras to collect commercial and educational footage of the Antarctic. The quadcopter would not be flown over concentrations of birds or mammals, or over Antarctic Specially Protected Areas or Historic Sites and Monuments. The RPAS would only be operated by pilots with extensive experience, who are pre-approved by the Expedition Leader. Several mitigation measures to reduce environmental impacts and prevent against loss of the quadcopter would be in place. Biosecurity procedures would be in place by using disinfecting agents before and after each flight. The applicant is seeking a Waste Permit to cover any accidental releases that may result from operating the RPAS.

Location: Antarctic Peninsula region.

Dates of Permitted Activities: December 19, 2023–February 05, 2024.

Kimiko S. Bowens-Knox,

Program Analyst, Office of Polar Programs.

[FR Doc. 2023–25002 Filed 11–13–23; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m. EDT, December 5, 2023.

PLACE: Virtual.

STATUS: The one item may be viewed by the public through webcast only.

MATTER TO BE CONSIDERED:

70966 Marine Investigative Report—Anchor Strike of Underwater Pipeline and Eventual Crude Oil Release, San Pedro Bay near Huntington Beach, California, October 1, 2021.

CONTACT PERSON FOR MORE INFORMATION: Candi Bing at (202) 590–8384 or by email at *bingc@ntsb.gov.*

Media Information Contact: Jennifer Gabris by email at *jennifer.gabris@ntsb.gov* or at (202) 314–6100.

This meeting will take place virtually. The public may view it through a live or archived webcast by accessing a link under ''Upcoming Events'' on the NTSB home page at *www.ntsb.gov.*

Schedule updates, including weather-related cancellations, are also available at *www.ntsb.gov.*

The National Transportation Safety Board is holding this meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b).

Dated: November 9, 2023.

LaSean R. McCray,

Assistant Federal Register Liaison Officer.

[FR Doc. 2023–25173 Filed 11–9–23; 11:15 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0183]

Vistra Operations Company LLC; Comanche Peak Nuclear Power Plant, Units 1 and 2; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft supplemental environmental impact statement; public meeting and request for comment; correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice that was published in the **Federal Register** (FR) on November 3, 2023, requesting public comment on draft Supplement 60, License Renewal, to the Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants, NUREG–1437, regarding the renewal of Facility Operating License Nos. NPF–87 and NPF–89 for an additional 20 years of operation for Comanche Peak Nuclear Power Plant, Units 1 and 2. This action is necessary to align with the comment period specified by the U.S. Environmental Protection Agency, specifically for the Comanche Peak License Renewal draft environmental impact statement.

DATES: The correction takes effect on November 14, 2023.

ADDRESSES: Please refer to Docket ID NRC–2022–0183 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0183. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* Draft Supplement 60, License Renewal, to the GEIS for License Renewal of Nuclear Plants, NUREG–1437, is available in ADAMS under Accession No. ML23299A252.
- NRC's PDR: The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tam Tran, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3617; email: *Tam.Rran@nrc.gov.*

SUPPLEMENTARY INFORMATION: In the FR on November 3, 2023, in FR Doc. 2023–24294, on page 75629, third column, the last paragraph, in the **DATES** section, correct ''Members of the public are invited to submit comments by December 18, 2023'' to read ''Members of the public are invited to submit comments by December 26, 2023.''

Dated: November 8, 2023.

For the Nuclear Regulatory Commission.

John M. Moses,

Deputy Director, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety,and Safeguards.

[FR Doc. 2023–25065 Filed 11–13–23; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[Docket ID: OPM–2023–0040]

Submission for Review: 3206–0235, Letter Reply To Request for Information, RI 20–64; Former Spouse Survivor Annuity Election, RI 20–64A; Information on Electing a Survivor Annuity for Your Former Spouse, RI 20–64B

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM), Retirement Services, offers the general public and other Federal agencies the opportunity to comment on the review of an expiring information collection request (ICR) without change: Letter Reply to Request for Information, RI 20–64; Former Spouse Survivor Annuity Election, RI 20–64A; and Information on Electing a Survivor Annuity for Your Former Spouse, RI 20–64B.

DATES: Comments are encouraged and will be accepted until January 16, 2024.

ADDRESSES: You may submit comments, identified by docket number and title, by the following method:

• *Federal Rulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent by email to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 936–0401.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0235). OPM is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

OPM uses RI 20–64, Letter Reply to Request for Information, to explain the annuity reductions required to pay for the cost of a former spouse survivor annuity benefit under the Civil Service Retirement System (CSRS), and to provide annuitants with information about what the beginning rate of the survivor annuity would be if the annuitant ultimately elects a former spouse survivor annuity benefit. OPM uses RI 20–64A, Former Spouse Survivor Annuity Election, to obtain an annuitant's former spouse survivor annuity election. RI 20–64B, Information on Electing a Survivor Annuity for Your Former Spouse, is a pamphlet that provides important information to retirees who want to provide a CSRS survivor annuity for a former spouse.

Analysis

Agency: Office of Personnel Management, Retirement Services.

Title: Letter Reply to Request for Information; Former Spouse Survivor Annuity Election.

OMB Number: 3206–0235.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 38.

Estimated Time per Respondent: 45 minutes for RI 20–64A and 8 minutes for RI 20–64.

Total Burden Hours: 24 hours.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2023–25061 Filed 11–13–23; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

[Docket ID: OPM–2023–0039]

Submission for Review: 3206–0201; Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System and the Open Season Website

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM), Retirement Services, offers the general public and other Federal agencies the opportunity to comment on an expiring information collection request (ICR), with change: 3206–0201, Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System and the Open Season website, Open Season Online.

DATES: Comments are encouraged and will be accepted until January 16, 2024.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202)936–0401 or reached via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION:

As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0201. OPM is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System, and the Open Season website, Open Season Online, are used by retirees and survivors. These systems collect information from retirees and survivors so that OPM may assist these customers change FEHB enrollments, add dependent and other insurance information for self and family enrollments, request plan brochures, make changes to addresses, cancel or suspend FEHB benefits, make payments to OPM when the FEHB payment is greater than the monthly annuity amount, and for purposes of requesting FEHB plan accreditation and customer satisfaction survey information.

The revision is as follows: The Open Season enrollment dates have been updated to reflect the upcoming benefits year of 2024 and enrollment period of November 13, 2023 through December 11, 2023.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System and Open Season Online.

OMB Number: 3206–0201.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 350,100.

Estimated Time Per Respondent: 10 minutes.

Total Burden Hours: 58,350.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2023–25062 Filed 11–13–23; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–41 and CP2024–41; MC2024–42 and CP2024–42]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 15, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–41 and CP2024–41; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 97 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 6, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* November 15, 2023.

2. *Docket No(s).:* MC2024–42 and CP2024–42; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 98 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 6, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* November 15, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–24986 Filed 11–13–23; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–43 and CP2024–43; MC2024–44 and CP2024–44; MC2024–45 and CP2024–45; MC2024–46 and CP2024–46]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 16, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://*

www.prc.gov. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–43 and CP2024–43; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 30 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 7, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Katalin K. Clendenin; *Comments Due:* November 16, 2023.

2. *Docket No(s).:* MC2024–44 and CP2024–44; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 99 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 7, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* November 16, 2023.

3. *Docket No(s).:* MC2024–45 and CP2024–45; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 100 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 7, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* November 16, 2023.

4. *Docket No(s).:* MC2024–46 and CP2024–46; *Filing Title:* USPS Request to Add Priority Mail Contract 788 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 7, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* November 16, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–25033 Filed 11–13–23; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98874; File No. SR–NYSE–2023–39]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 9521 and 9522 To Correct Obsolete References to a FINRA Department

November 7, 2023.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4 thereunder,[2] notice is hereby given that on October 26, 2023, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 9521 (Purposes and Definitions) and 9522 (Initiation of Eligibility Proceeding; Member Regulation Consideration) to correct an obsolete reference to a department of the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to proposes to amend Rules 9521 (Purposes and Definitions) and 9522 (Initiation of Eligibility Proceeding; Member Regulation Consideration) to correct an obsolete reference to a FINRA department.

Background and Proposed Rule Change

In 2013, the NYSE adopted disciplinary rules that are, with certain exceptions, substantially the same as the FINRA Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions.[3] The NYSE disciplinary rules were implemented on July 1, 2013.[4]

In adopting disciplinary rules modeled on FINRA's rules, the NYSE adopted the procedures set forth in the Rule 9520 Series for a covered person to become or remain associated with a member organization notwithstanding the existence of a statutory disqualification as defined in Section 3(a)(39) of the Act, and for a current member organization or covered person to obtain relief from the eligibility or qualification requirements of the Exchange's Rules, which the rule refers to as ''eligibility proceedings.'' Rule 9521 sets forth certain definitions relating to eligibility proceedings. Rule 9521(b)(1) defines the term ''Application'' to mean FINRA's Form MC–400 for covered persons or Form MC–400A for member organizations filed with FINRA's Department of Registration and Disclosure (abbreviated as ''RAD'' in the Exchange's rules). Rule 9522, which governs initiation of an eligibility proceeding by the Exchange, contains references to RAD in subdivisions (b)(1), (c) and (e)(3)(A).

In 2020, FINRA changed RAD's name to ''Credentialing, Registration, Education and Disclosure'' (abbreviated as ''CRED'' in FINRA's rules) and amended, among others, FINRA Rules 9521 and 9522 to reflect the name change.[5] The Exchange proposes to conform the references in the Exchange's rules. To effectuate this change, the Exchange would retain the reference to ''FINRA's Department'' in Rule 9521(b)(1) and change the capital ''D'' in department to lowercase. The Exchange would replace ''Registration and Disclosure ('RAD')'' in Rule 9521(b)(1) with ''Credentialing, Registration, Education and Disclosure ('CRED')''. The Exchange would also replace ''RAD'' with ''CRED'' in Rules 9522(b)(1) (one reference), (c) (two references) and (e)(3)(A) (one reference).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[6] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change to Rules 9521 and 9522 to update and replace obsolete references to a FINRA department would increase the clarity and transparency of the Exchange's rules and remove impediments to and perfect the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public could more easily navigate and understand the Exchange rules. The Exchange further believes that the proposed change would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity, thereby reducing potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[7] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather concerned with deleting and replacing obsolete references in its rules. Since the proposal does not substantively modify system functionality or processes on the Exchange, the proposed changes will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder. Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission believes that waving the 30-day operative delay is consistent with the protection of investors and the public interest, because it will allow the Exchange to correct obsolete references to a FINRA department in its rule text. Accordingly, the Commission designates the proposed rule change to be operative upon filing.[14]

[3] *See* Securities Exchange Act Release No. 68678 (January 16, 2013), 78 FR 5213 (January 24, 2013) (SR–NYSE–2013–02) (''2013 Notice''); Release No. 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR–NYSE–2013–02) (''2013 Approval Order'').

[4] *See* NYSE Information Memorandum 13–8 (May 24, 2013).

[5] *See* Securities Exchange Act Release No. 90344 (November 4, 2020), 85 FR 71695 (November 10, 2020) (SR–FINRA–2020–039) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rules To Reflect Name Changes to Two FINRA Departments: The Office of Dispute Resolution and the Department of Registration and Disclosure).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(8).

[8] 15 U.S.C. 78(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission also has

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSE–2023–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSE–2023–39. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSE–2023–39 and should be submitted on or before December 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–25009 Filed 11–13–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98877; File No. SR–NYSENAT–2023–24]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 10.9521 and 10.9522 To Correct Obsolete References to a FINRA Department

November 7, 2023.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4 thereunder,[2] notice is hereby given that on October 26, 2023, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 10.9521 (Purposes and Definitions) and 10.9522 (Initiation of Eligibility Proceeding; Member Regulation Consideration) to correct an obsolete reference to a department of the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rules 10.9521 (Purposes and Definitions) and 10.9522 (Initiation of Eligibility Proceeding; Member Regulation Consideration) to correct an obsolete reference to a FINRA department.

Background and Proposed Rule Change

In 2018, NYSE National adopted disciplinary rules that are, with certain exceptions, substantially the same as the disciplinary rules of its affiliate NYSE American LLC, which are in turn substantially similar to the FINRA Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions.[3]

In adopting disciplinary rules modeled on FINRA's rules, NYSE National adopted procedures set forth in the Rule 10.9520 Series for an Associated Person to become or remain associated with an ETP Holder notwithstanding the existence of a statutory disqualification as defined in Section 3(a)(39) of the Act, and for a current ETP Holder or Associated Person to obtain relief from the eligibility or qualification requirements of the Exchange's Rules, which the rule refers to as ''eligibility proceedings.'' Rule 10.9521 sets forth certain definitions relating to eligibility proceedings. Rule 10.9521(b)(1) defines the term ''Application'' to mean

considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12), (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 83289 (May 17, 2018), 83 FR 23968, 23976 (May 23, 2018) (SR–NYSENAT–2018–02) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Amended by Amendment No. 1, To Support the Re-Launch of NYSE National, Inc. on the Pillar Trading Platform).

FINRA's Form MC–400 for Associated Persons or Form MC–400A for ETP Holders filed with FINRA's Department of Registration and Disclosure (abbreviated as ''RAD'' in the Exchange's rules). Rule 10.9522, which governs initiation of an eligibility proceeding by the Exchange, contains references to RAD in subdivisions (b)(1), (c) and (e)(3)(A).

In 2020, FINRA changed RAD's name to ''Credentialing, Registration, Education and Disclosure'' (abbreviated as ''CRED'' in FINRA's rules) and amended, among others, FINRA Rules 9521 and 9522 to reflect the name change.[4] The Exchange proposes to conform the references in the Exchange's rules. To effectuate this change, the Exchange would retain the reference to ''FINRA's Department'' in Rule 10.9521(b)(1) and change the capital ''D'' in department to lowercase. The Exchange would also replace ''Registration and Disclosure ('RAD')'' in Rule 10.9521(a)(1) [sic] with ''Credentialing, Registration, Education and Disclosure ('CRED')''. The Exchange would also replace ''RAD'' with ''CRED'' in Rules 10.9522(b)(1) (one reference), (c) (two references) and (e)(3)(A) (one reference).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[5] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change to Rules 10.9521 and 10.9522 to update and replace obsolete references to a FINRA department would increase the clarity and transparency of the Exchange's rules and remove impediments to and perfect the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public could more easily navigate and understand the Exchange rules. The Exchange further believes that the proposed change would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity, thereby reducing potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[6] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather concerned with deleting and replacing obsolete references in its rules. Since the proposal does not substantively modify system functionality or processes on the Exchange, the proposed changes will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)[8] thereunder. Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission believes that waving the 30-day operative delay is consistent with the protection of investors and the public interest, because it will allow the Exchange to correct obsolete references to a FINRA department in its rule text. Accordingly, the Commission designates the proposed rule change to be operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSENAT–2023–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSENAT–2023–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

[4] *See* Securities Exchange Act Release No. 90344 (November 4, 2020), 85 FR 71695 (November 10, 2020) (SR–FINRA–2020–039) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rules To Reflect Name Changes to Two FINRA Departments: The Office of Dispute Resolution and the Department of Registration and Disclosure).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(8).

[7] 15 U.S.C. 78(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSENAT–2023–24 and should be submitted on or before December 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–25012 Filed 11–13–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98879; File No. SR–NYSE–2023–09]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Amend the NYSE Listed Company Manual To Adopt Listing Standards for Natural Asset Companies

November 7, 2023.

On September 27, 2023, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the NYSE Listed Company Manual to adopt a new listing standard for the listing of Natural Asset Companies. The proposed rule change was published for comment in the **Federal Register** on October 4, 2023.[3] The Commission has received comments on the proposed rule change.[4]

Section 19(b)(2) of the Act[5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission will either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is November 18, 2023. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change, so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates January 2, 2024, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NYSE–2023–09).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–25008 Filed 11–13–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98875; File No. SR–NYSECHX–2023–20]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 10.9521 and 10.9522 To Correct Obsolete References to a FINRA Department

November 7, 2023.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4 thereunder,[2] notice is hereby given that on October 26, 2023, the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 10.9521 (Purposes and Definitions) and 10.9522 (Initiation of Eligibility Proceeding; Member Regulation Consideration) to correct an obsolete reference to a department of the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

---

[14] 17 CFR 200.30–3(a)(12), (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98665 (Sep. 29, 2023), 88 FR 68811 (Oct. 4, 2023) (SR–NYSE–2023–09).

[4] The public comment file for SR–NYSE–2023–09 is available on the Commission's website at *https://www.sec.gov/comments/sr-nyse-2023-09/srnyse202309.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to proposes to amend Rules 10.9521 (Purposes and Definitions) and 10.9522 (Initiation of Eligibility Proceeding; Member Regulation Consideration) to correct an obsolete reference to a FINRA department.

Background and Proposed Rule Change

In 2022, NYSE Chicago adopted disciplinary rules that are, with certain exceptions, substantially the same as the disciplinary rules of its affiliate NYSE Arca, Inc., which are in turn substantially similar to the FINRA Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions.[3]

In adopting disciplinary rules modeled on FINRA's rules, NYSE Chicago adopted procedures set forth in the Rule 10.9520 Series for a covered person to become or remain associated with a Participant or Participant Firm notwithstanding the existence of a statutory disqualification as defined in Section 3(a)(39) of the Act, and for a current Participant, Participant Firm or covered person to obtain relief from the eligibility or qualification requirements of the Exchange's Rules, which the rule refers to as ''eligibility proceedings.'' Rule 10.9521 sets forth certain definitions relating to eligibility proceedings. Rule 10.9521(b)(1) defines the term ''Application'' to mean FINRA's Form MC–400 for covered persons or Form MC–400A for Participants or Participant Firms filed with FINRA's Department of Registration and Disclosure'' (abbreviated as ''RAD'' in the Exchange's rules). Rule 10.9522, which governs initiation of an eligibility proceeding by the Exchange, contains references to RAD in subdivisions (b)(1), (c) and (e)(3)(A).

In 2020, FINRA changed RAD's name to ''Credentialing, Registration, Education and Disclosure'' (abbreviated as ''CRED'' in FINRA's rules) and amended, among others, FINRA Rules 9521 and 9522 to reflect the name change.[4] The Exchange proposes to conform the references in the Exchange's rules. To effectuate this change, the Exchange would retain the reference to ''FINRA's Department'' in Rule 10.9521(b)(1) and change the capital ''D'' in department to lowercase. The Exchange would replace ''Registration and Disclosure ('RAD')'' in Rule 10.9521(b)(1) with ''Credentialing, Registration, Education and Disclosure ('CRED')''. The Exchange would also replace ''RAD'' with ''CRED'' in Rules 10.9522(b)(1) (one reference), (c) (two references) and (e)(3)(A) (one reference).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[5] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change to Rules 10.9521 and 10.9522 to update and replace obsolete references to a FINRA department would increase the clarity and transparency of the Exchange's rules and remove impediments to and perfect the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public could more easily navigate and understand the Exchange rules. The Exchange further believes that the proposed change would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity, thereby reducing potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[6] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather concerned with deleting and replacing obsolete references in its rules. Since the proposal does not substantively modify system functionality or processes on the Exchange, the proposed changes will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)[8] thereunder. Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission believes that waving the 30-day operative delay is consistent with the protection of investors and the public interest, because it will allow the Exchange to correct obsolete references to a FINRA department in its rule text. Accordingly, the Commission

[3] *See* Securities Exchange Act Release No. 95020 (June 1, 2022), 87 FR 35034 (June 8, 2022) (SR–NYSECHX–2022–10) (Notice of Filing of and Immediate Effectiveness of Proposed Rule Change To Adopt Investigation, Disciplinary, Sanction, and Other Procedural Rules Modeled on the Rules of the Exchange's Affiliates).

[4] *See* Securities Exchange Act Release No. 90344 (November 4, 2020), 85 FR 71695 (November 10, 2020) (SR–FINRA–2020–039) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rules To Reflect Name Changes to Two FINRA Departments: The Office of Dispute Resolution and the Department of Registration and Disclosure).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(8).

[7] 15 U.S.C. 78(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

designates the proposed rule change to be operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov*. Please include file number SR–NYSECHX–2023–20 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSECHX–2023–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSECHX–2023–20 and should be submitted on or before December 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–25011 Filed 11–13–23; 8:45 am]

BILLING CODE 8011–01–P

[13] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98873; File No. SR–PEARL–2023–60]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Equities Fee Schedule

November 7, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2023, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the fee schedule (the ''Fee Schedule'') applicable to MIAX Pearl Equities, an equities trading facility of the Exchange.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/pearl-options/rule-filings,* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section 1)e) of the Fee Schedule to amend the Midpoint Peg Order Adding Liquidity at Midpoint Volume Tiers table to offer a new enhanced rebate for executions of Midpoint Peg Orders[3] in securities priced at or above $1.00 per share that execute at the midpoint of the Protected NBBO[4] and add liquidity to the Exchange in all Tapes. In response to the competitive environment, the Exchange offers tiered pricing, which provides Equity Members[5] with opportunities to qualify for higher rebates or lower fees when certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Equity Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Midpoint Peg Order is a non-displayed Limit Order that is assigned a working price pegged to the midpoint of the PBBO. A Midpoint Peg Order receives a new timestamp each time its working price changes in response to changes in the midpoint of the PBBO. *See* Exchange Rule 2614(a)(3).

[4] With respect to the trading of equity securities, the term ''the term ''Protected NBB'' or ''PBB'' shall mean the national best bid that is a Protected Quotation, the term ''Protected NBO'' or ''PBO'' shall mean the national best offer that is a Protected Quotation, and the term ''Protected NBBO'' or ''PBBO'' shall mean the national best bid and offer that is a Protected Quotation. *See* Exchange Rule 1901.

[5] The term ''Equity Member'' is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. *See* Exchange Rule 1901.

Midpoint Peg Orders

The Exchange currently provides a standard rebate of ($0.00205) [6] per share for executions of Midpoint Peg Orders in securities priced at or above $1.00 per share that execute at the midpoint of the Protected NBBO and add liquidity to the Exchange in all Tapes.[7]

The Exchange also provides enhanced rebates through a tiered pricing structure for executions of Midpoint Peg Orders in securities priced at or above $1.00 per share that execute at the midpoint of the Protected NBBO and add liquidity to the Exchange in all Tapes based on an Equity Member achieving certain ''Midpoint ADAV'' thresholds (defined below) (the ''Midpoint Volume Tiers Program'').[8] Pursuant to the Midpoint Volume Tiers Program, Midpoint ADAV means the average daily added volume (''ADAV'') for the current month consisting of Midpoint Peg Orders in securities priced at or above $1.00 per share that execute at the midpoint of the Protected NBBO and add liquidity to the Exchange.[9] Pursuant to Tier 1 of the Midpoint Volume Tiers Program, Equity Members may qualify for an enhanced rebate of ($0.0025) per share for executions of Midpoint Peg Orders in securities priced at or above $1.00 per share that execute at the midpoint of the Protected NBBO and add liquidity to the Exchange by achieving a Midpoint ADAV equal to or greater than 500,000 shares. Pursuant to Tier 2 of the Midpoint Volume Tiers Program, Equity Members may qualify for an enhanced rebate of ($0.0027) per share for executions of Midpoint Peg Orders in securities priced at or above $1.00 per share that execute at the midpoint of the Protected NBBO and add liquidity to the Exchange by achieving a Midpoint ADAV equal to or greater than 1,000,000 shares.

Proposal

The Exchange now proposes to amend the Midpoint Volume Tiers Program to add a new Tier 3 and associated increased rebate. In particular, the Exchange proposes that pursuant to Tier 3 of the Midpoint Volume Tiers Program, Equity Members may now qualify for an enhanced rebate of ($0.0029) per share for executions of Midpoint Peg Orders in securities priced at or above $1.00 per share that execute at the midpoint of the Protected NBBO and add liquidity to the Exchange by achieving a Midpoint ADAV equal to or greater than 1,500,000 shares.

The purpose of the proposed enhanced Tier 3 rebate for executions of Midpoint Peg Orders in securities priced at or above $1.00 per share that execute at the midpoint of the Protected NBBO and add liquidity to the Exchange is to encourage Equity Members that provide liquidity through non-displayed orders to strive for a higher Midpoint ADAV on the Exchange in order to qualify for the higher rebate, which should encourage increased order flow (particularly in the form of liquidity adding non-displayed Midpoint Peg Orders that execute at the midpoint of the Protected NBBO) to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants.

The Exchange believes that providing a higher enhanced rebate for executions of Midpoint Peg Orders in securities priced at or above $1.00 per share that execute at the midpoint of the Protected NBBO and add liquidity to the Exchange is a reasonable means to incentivize additional liquidity at the midpoint of the Protected NBBO, which in turn should increase the attractiveness of the Exchange as a destination venue as Equity Members seeking price improvement would be more motivated to direct their orders to the Exchange because they would have a heightened expectation of the availability of liquidity at the midpoint of the Protected NBBO.

The Exchange notes that competing exchanges provide similar pricing structures and the proposed enhanced rebate is comparable to and higher than the rebate provided by at least two competing exchanges for executions of non-displayed orders in securities priced at or above $1.00 per share that are pegged to the midpoint of national best bid and offer.[10]

Implementation

The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on November 1, 2023.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(4) of the Act [12] in particular, in that it is an equitable allocation of reasonable fees and other charges among its Equity Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5) [13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly fragmented and competitive market in which market participants can readily direct their order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, and there are a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly

[6] Rebates are indicated by parentheses. *See* the General Notes section of the Fee Schedule.

[7] See Fee Schedule, Sections (1)(a) and (1)(b), Liquidity Indicator Code ''Ap'' (adds liquidity and executes at the midpoint, non-displayed Midpoint Peg Order (all Tapes)). The Exchange notes that the standard rebate is not changing under this proposal.

[8] *See* Fee schedule, Section (1)(e).

[9] ''ADAV'' means average daily added volume calculated as the number of shares added per day and ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis. The Exchange excludes from its calculation of ADAV and ADV shares added or removed on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours (''Exchange System Disruption''), on any day with a scheduled early market close, and on the ''Russell Reconstitution Day'' (typically the last Friday in June). Routed shares are not included in the ADAV or ADV calculation. With prior notice to the Exchange, an Equity Member may aggregate ADAV or ADV with other Equity Members that control, are controlled by, or are under common control with such Equity Member (as evidenced on such Equity Member's Form BD). *See* the Definitions section of the Fee Schedule.

[10] *See* MEMX Equities Fee Schedule, *available at https://info.memxtrading.com/equities-trading-resources/us-equities-fee-schedule/* (providing enhanced rebates ranging from ($0.0018) up to ($0.0028) per share for members that achieve non-displayed ADAV ranging from 1,000,000 shares to 8,000,000 shares, which includes midpoint peg order executions); *see also* Nasdaq PSX Pricing Schedule, *available at https://www.nasdaqtrader.com/Trader.aspx?id=PSX_Pricing* (providing a standard rebate of $0.0018 per share for all firms that add non-displayed liquidity via an order with midpoint pegging and a rebate of $0.0025 per share for firms that add non-displayed liquidity via an order with midpoint pegging of at least 1 million shares ADV).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78f(b)(5).

available information, as of October 26, 2023, no single registered equities exchange currently has more than approximately 15–16% of the total market share of executed volume of equities trading for the month of October 2023.[14] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 2.36% of the overall market share.[15] The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [16]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance liquidity and market quality to the benefit of all Members and market participants.

The Exchange believes that the proposed change to add a new enhanced rebate to the Midpoint Volume Tiers Program is reasonable because it will provide Equity Members with an additional incentive to achieve higher volume thresholds on the Exchange. The Exchange notes that volume-based incentives for midpoint peg order executions have been adopted by competing exchanges,[17] and the Exchange believes its proposal is reasonable, equitable, and not unfairly discriminatory because it is open to all Equity Members on an equal basis and provides an additional benefit that is reasonably related to the value to of the Exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and the introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes that the proposal is reasonable because it is designed to incentivize market participants to direct additional order flow to the Exchange, which should enhance the Exchange's market quality and provide price improvement through the use of orders that are designed to execute at the midpoint of the Protected NBBO through the provision of enhanced rebates for executions of Midpoint Peg Orders in securities priced at or above $1.00 per share that execute at the midpoint of the Protected NBBO and add liquidity to the Exchange in all Tapes.[18] The Exchange believes its proposal will promote price improvement and increased liquidity on the Exchange which will benefit all market participants.

The Exchange believes the proposed enhanced Tier 3 rebate is equitable and not unfairly discriminatory because all Equity Members will continue to be eligible to qualify for the enhanced rebates provided in the Midpoint Volume Tiers Program, including the new enhanced Tier 3 rebate, and have the opportunity to receive the corresponding enhanced rebate if such criteria is achieved (as described above, based on Midpoint ADAV).

The Exchange further believes that the proposed criteria for the Tier 3 rebate in the Midpoint Volume Tiers Program (Midpoint ADAV equal to or greater than 1,500,000 shares) is reasonable because the proposed criteria is incrementally more difficult to achieve than that of the Tier 2 rebate; thus, proposed Tier 3 offers an appropriately higher rebate commensurate with the corresponding higher Midpoint ADAV requirement. Therefore, the Exchange believes the proposed changes to the Midpoint Volume Tiers Program is consistent with an equitable allocation of fees and rebates, as the more stringent criteria correlates with the corresponding tier's higher rebate. Additionally, the Exchange believes that the proposed rebate is reasonable as such rebate is comparable to, and higher than, the rebates for executions of liquidity-adding non-displayed orders provided by at least two other exchanges under similar volume-based tiers.[19]

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Equity Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed change will encourage Equity Members to maintain or increase their order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [20]

Intramarket Competition

The Exchange believes that the proposal would incentivize Equity Members to maintain or increase their order flow, thereby contributing to a

[14] *See* the ''Market Share'' section of the Exchange's website, *available at https://www.miaxglobal.com/* (last visited October 26, 2023).

[15] *Id.*

[16] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37499 (June 29, 2005).

[17] *See supra* note 10.

[18] The Exchange notes that Equity Members that do not qualify for one of the Midpoint Volume Tiers will continue to receive the standard rebate of ($0.00205) per share for executions of Midpoint Peg Orders in securities priced at or above $1.00 per share that execute at the midpoint of the Protected NBBO and add liquidity to the Exchange in all Tapes.

[19] *See supra* note 10.

[20] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 47396 (June 29, 2005).

deeper and more liquid market to the benefit of all market participants and enhance the attractiveness of the Exchange as a trading venue, and to provide price improvement through the use of orders that are designed to execute at the midpoint of the Protected NBBO, which the Exchange believes, in turn, would continue to encourage participants to direct order flow to the Exchange. Greater liquidity benefits all Equity Members by providing more trading opportunities and encourages Equity Members to send orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for enhanced, incremental rebates under the Midpoint Volume Tiers Program is available to all Equity Members that meet the associated Midpoint ADAV requirements in any month. The Exchange believes the requirements in the Midpoint Volume Tiers Program are reasonably related to the enhanced market quality that the Midpoint Volume Tiers Program is designed to promote. Similarly, the proposed enhanced Tier 3 rebate for executions of Midpoint Peg Orders in securities priced at or above $1.00 per share that execute at the midpoint of the Protected NBBO and add liquidity to the Exchange would apply equally to all Equity Members. As such, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The Exchange believes its proposal will benefit competition, and the Exchange notes that it operates in a highly competitive market. Equity Members have numerous alternative venues they may participate on and direct their order flow to, including fifteen other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, for the month of October 2023, no single registered equities exchange currently has more than 15–16% of the total market share of executed volume of equities trading.[21] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow in response to new or different pricing structures being introduced to the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates generally, and market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable.

As described above, the proposal is designed to enhance market quality on the Exchange and to encourage more Equity Members to maintain or increase their order flow, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue, and to encourage Equity Members to provide price improvement through the use of orders that are designed to execute at the midpoint of the Protected NBBO. In turn, the Exchange believes that the proposed enhanced Tier 3 rebate for executions of Midpoint Peg Orders in securities priced at or above $1.00 per share that execute at the midpoint of the Protected NBBO and add liquidity to the Exchange would encourage the submission of additional order flow to the Exchange, particularly in the form of Midpoint Peg Orders executed at the midpoint of Protected NBBO, thereby promoting market depth, enhanced execution opportunities, price improvement, and price discovery to the benefit of all Equity Members and market participants.

As described above the Exchange's proposal is a competitive proposal designed to encourage additional order flow to the Exchange through a combination of volume based incentives, which have been widely adopted by exchanges, and standard pricing that is comparable to, and/or competitive with, pricing for similar executions in place at other exchanges.[22]

Accordingly, the Exchange believes its proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar standard pricing for Added Midpoint Volume to market participants that achieves certain volume criteria and thresholds.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [23] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission*, the D.C. circuit stated: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possess a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . .''.[24] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[25] and Rule 19b–4(f)(2) [26] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[21] *See supra* note 14.

[22] *See supra* note 10.

[23] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[24] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSE–2006–21)).

[25] 15 U.S.C. 78s(b)(3)(A)(ii).

[26] 17 CFR 240.19b–4(f)(2).

change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include file number SR–PEARL–2023–60 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–PEARL–2023–60. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–PEARL–2023–60 and should be submitted on or before December 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Christina Z. Milnor,

Assistant Secretary.

[FR Doc. 2023–25007 Filed 11–13–23; 8:45 am]

BILLING CODE 8011–01–P

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98878; File No. SR–NASDAQ–2023–036]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Nasdaq Rules 4120 and 4753

November 7, 2023.

I. Introduction

On September 12, 2023, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 4120 (Limit Up-Limit Down and Trading Halts) and Rule 4753 (Nasdaq Halt Cross) to set forth specific requirements for halting and resuming trading in a security that is subject to a reverse stock split. The proposed rule change was published for comment in the **Federal Register** on September 28, 2023.[3]

On October 27, 2023, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[4] The Commission has received no comments on the proposal.

The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Self-Regulatory Organization's Description of the Proposal, as Modified by Amendment No. 1

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In conjunction with the increase in overall reverse stock splits in recent years, Nasdaq proposes to amend Rule 4120 and Rule 4753 to set forth specific requirements for halting trading in a security that is subject to a reverse stock split and resuming trading using the Nasdaq Halt Cross.[5] Current Rule 4120 does not specifically list rule reverse stock splits in the enumerated circumstances in which Nasdaq may halt trading in a security. The proposed amendments will be specific to the automatic initiation, pre-market trading and opening of a Nasdaq-listed security undergoing a reverse stock split.

Background

Nasdaq has observed that the current market environment has led to an increase in reverse stock split activity. In 2022, Nasdaq processed 196 reverse stock splits, compared to 35 in 2021 and 98 in 2020. Just in the first quarter of 2023, Nasdaq processed 78 reverse stock splits, and projects significantly more throughout 2023. Reverse stock splits are often effected by smaller companies that do not have broad media or research coverage. In most cases, the companies are listed on the Capital Market tier and are conducting reverse stock splits to achieve compliance with Nasdaq's $1 minimum bid price requirement.[6]

Nasdaq believes that the increase in companies effecting reverse stock splits warrants amendments to the trading halt rules to allow for Nasdaq to help reduce the potential for errors resulting in a material effect on the market resulting from market participants' processing of the reverse stock split, including incorrect adjustment or entry of orders. Nasdaq currently processes reverse

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98489 (Sept. 22, 2023), 88 FR 66913 (Sept. 28, 2023) (SR–NASDAQ–2023–036) ("Notice").

[4] In Amendment No. 1, the Exchange makes non-substantive clarifying changes and provides additional justification for the proposal. Amendment No. 1 to the proposed rule change is available at *https://www.sec.gov/comments/sr-nasdaq-2023-036/srnasdaq2023036-283339-691882.pdf.*

[5] The "Nasdaq Halt Cross" is the process for determining the price at which Eligible Interest shall be executed at the open of trading for a halted security and for executing that Eligible Interest. *See* Rule 4753(a)(4). "Eligible Interest" shall mean any quotation or any order that has been entered into the system and designated with a time-in-force that would allow the order to be in force at the time of the Halt Cross. *See* Nasdaq Rule 4753(a)(5).

[6] Rule 5550(a)(2) specifies that a Company that has its Primary Equity Security listed on the Capital Market must have a minimum bid price of at least $1 per share. *See* also Rule 5450(a)(1) (Global and Global Select Markets). Companies are afforded a grace period pursuant to Rule 5810(c)(3)(A) to regain compliance.

stock splits overnight, with the security opening for trading at 4 a.m. ET in the pre-market hours (*i.e.,* the trading session between 4 a.m. to 9:30 a.m. ET) on a split-adjusted basis. Recently, market participants have expressed concerns with allowing trading on an adjusted basis at 4 a.m., noting that it is not optimal because system errors or problems with orders may go unnoticed for a period of time when a security that has undergone a reverse stock split opens for trading with the other thousands of securities. These errors have the potential to adversely affect investors, market participants and the issuer.[7] For example, in one recent instance problems in connection with the processing of a reverse stock split resulted in a broker executing trades selling more shares than customers held in their accounts, resulting in a temporary short position.

As such, Nasdaq believes it is appropriate to impose a trading halt, which would prohibit pre-market trading immediately after a reverse stock split and open trading in such securities using the Nasdaq Halt Cross Process set forth in Rule 4753. The proposed new rule will allow for Nasdaq and market participants to better detect any errors or problems with orders for the security resulting from the reverse stock split before trading in the security begins and thereby avoid any material effect on the market.

Description of the Proposed Amendment

Nasdaq is proposing to: (1) amend Rule 4120(a) to provide the Exchange with explicit authority to declare a trading halt before the end of Post-Market Hours[8] on the day immediately before the market effective date of a reverse stock split; and (2) amend Rule 4120(c) to include this halt in the existing procedures for initiating and terminating a trading halt. More specifically, proposed Rule 4120(a)(14) provides that Nasdaq shall halt trading of a security for which Nasdaq is the Primary Listing Market[9] before the end of the Post-Market Hours on the day immediately before the market effective date of a reverse stock split. A trading halt due to a reverse stock split will be mandatory pursuant to proposed Rule 4120(a)(14). Nasdaq also proposes to modify Rule 4120(c)(7)(A) to include the new halt authority proposed in Rule 4120(a)(14) in the reopening process currently applicable to halts under Rules 4120(a)(1), (4), (5), (6), (9), (10) and (11). In general, Nasdaq expects to initiate the halt at 7:50 p.m., prior to the close of post-market trading at 8 p.m. on the day immediately before the split in the security becomes effective,[10] and resume trading at 9 a.m. on the day the split is effective.[11] Nasdaq believes that this halt and delayed opening[12] will give sufficient time for investors to review their orders and the quotes for the security and allow market participants to ensure that their systems have properly adjusted for the reverse stock split. Once post-market trading closes at 8:00 p.m. all orders for a halted security will be cancelled.

Nasdaq is also proposing to update Rule 4753(b) to include proposed Rule 4120(a)(14) in the list of numerated provisions that would be subject to the Nasdaq Halt Cross. As such, any security that is subject to a reverse stock split will be reopened using the Nasdaq Halt Cross prior to trading during market hours.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[13] Specifically, the proposal is consistent with Section 6(b)(5) of the Act[14] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

As described above, the Exchange is seeking to amend rules related to halting and resuming trading in U.S.-listed equity securities for which Nasdaq is the Primary Listing Market that is subject to a reverse stock split. The Exchange believes that establishing a reverse stock split trading halt rule will protect investors by giving the Exchange authority to act in situations where it is necessary to maintain fair and orderly markets, such as when a security is subject to a reverse stock split and companies have not updated their system to account for the new stock price. The Exchange also believes that it is reasonable and appropriate to use the Nasdaq Halt Cross process under Rule 4753 to re-open trading in a security that has been halted due to a reverse stock split because it is consistent with the process that is typically used by Nasdaq when reopening a security that has been halted under Rule 4120. It will also ensure that the process for resuming trading following a reverse stock split halt is consistent with other types of halts initiated by Nasdaq. Currently, none of the provisions in Rule 4120 provide authority to pre-emptively declare a trading halt in a security undergoing a significant corporate action that could lead to investor or market confusion.

The Exchange believes that the proposed amendments will provide greater transparency and clarity with respect to the manner in which trading will be halted due to a reverse stock split, and the process through which that halt will be implemented and terminated. Particularly, Nasdaq will not have the discretion of determining whether to declare a trading halt in a security that is subject to a reverse stock split. Rather, following the reverse stock split of the security for which Nasdaq is the Primary Listing Market, trading in the security will halt prior to the end of Post-Market Hours on the day immediately before the market effective date of a reverse stock split. Nasdaq also

[7] In a separate filing, Nasdaq also proposed changes to adopt specific notification and disclosure requirements for reverse stock splits. *See* Securities Exchange Act Release No. 98014 (July 28, 2023), 88 FR 51376 (August 3, 2023) (SR–Nasdaq–2023–21).

[8] The term ''Post-Market Hours'' means the period of time beginning immediately after the end of Market Hours and ending at 8 p.m. ET. *See* Nasdaq Rule Equity 1, Section 1(a)(9).

[9] Primary Listing Market is defined in Section X.A.8 of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''UTP Plan'') as ''the national securities exchange on which an Eligible Security is listed. If an Eligible Security is listed on more than one national securities exchange, Primary Listing Market means the exchange on which the security has been listed the longest.''

[10] Initiating the halt at approximately 7:50 p.m. will provide Nasdaq with a limited buffer to ensure that trading in a security that is undergoing a reverse stock split will not continue after the close of post-market trading. While the Exchange does not anticipate halting a security that undergoes a reverse stock split sooner than 7:50 p,m., the Exchange may halt trading sooner than 7:50 p.m. for other reasons as described in Nasdaq Equity 4, Section 4120. Nasdaq will provide notice of the halt through NasdaqTrader.com available at, *https://www.nasdaqtrader.com/Trader.aspx?id=TradeHalts.*

[11] Nasdaq may change the resumption time if, for example, there was an Extraordinary Market Activity that could interfere with a fair and orderly 9:00 a.m. resumption. ''Extraordinary Market Activity'' is defined in the UTP Plan. Nasdaq will provide notice of the re-opening of the security through NasdaqTrader.com available at, *https://www.nasdaqtrader.com/Trader.aspx?id=TradeHalts.*

[12] Trading in a security that has undergone a reverse stock split will have a delayed opening because following the reverse stock split, the security will not re-open until the end of pre-market trading. Orders that have been entered for execution prior to the opening cross would be able to execute in the halt cross at 9 a.m.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

believes it is appropriate to re-open the security at 9:00 a.m. because it gives the Exchange an opportunity to review its order book and root out any orders in a security that has undergone a reverse stock split, that have not correctly adjusted to the security's new stock price. The proposed changes seek to achieve consistency with respect to the initiation and termination of a trading halt with respect to securities that are subject to a reverse stock split, while maintaining a fair and orderly market, protecting investors and protecting the public interest.

Additionally, establishing a mandatory trading halt for securities that are subject to a reverse stock split and resuming trading thereafter promotes fair and orderly markets and the protection of investors, because it allows Nasdaq to protect the broader interests of the national market system and addresses potential concerns that system errors may affect immediate trading in those securities. Nasdaq believes that given the increase in companies effecting reverse stock splits, the proposed trading halt rules will help Nasdaq reduce the potential for errors resulting in a material effect on the market resulting from market participants' processing of the reverse stock split, including incorrect adjustment or entry of orders. Additionally, resuming trading at 9:00 a.m. also promotes fair and orderly markets and the protection of investors by allowing time to remove any orders that have not adjusted for the security's new reverse stock split price.

Based on the foregoing, the Exchange believes that the proposed rules are consistent with Section 6(b)(5) of the Act [15] because they will promote just and equitable principles of trade and will remove any impediments to a free and open market and a national market system by allowing sufficient time for investors to review their orders and the quotes for a security that are subject to a reverse stock split, and allow market participants to ensure that their systems have properly accounted for the reverse stock split. As discussed previously, the Exchange believes that the proposed amendments establishing the authority and process for reverse stock split trading halts and the resumption of trading is consistent with the Act, which itself imposes obligations on exchanges with respect to issuers that are listed.

[15] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as explained below.

The Exchange believes the proposal will not impose a burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change is designed to protect investors and facilitate a fair and orderly market, which are both important purposes of the Act. To the extent that there is any impact on intermarket competition, it is incidental to these objectives.

The Exchange does not believe that the proposed rule change imposes a burden on intra-market competition because the provisions apply to all market participants and issuers equally. In addition, information regarding the halting and resumption of trading will be disseminated using several freely accessible sources to ensure broad availability of information offered by the Exchange that are available to subscribers.

In addition, the proposals include provisions related to the declaration and timing of trading halts and the resumption of trading designed to avoid any advantage to those who can react more quickly than other participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Discussion and Commission Findings

The Commission is approving the proposed rule change, as modified by Amendment No. 1, for the reasons discussed below.[16] The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, including Section 6(b)(5) of the Exchange Act,[17] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

[16] In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

As noted above, the proposal, as modified by Amendment No.1, would extend the Exchange's non-discretionary authority to declare a regulatory halt to cases where a security for which Nasdaq is the Primary Listing Market [18] is undergoing a reverse stock split.[19] As proposed, the Exchange will declare a regulatory halt [20] for which Nasdaq is the Primary Listing Market before the end of Post-Market Hours [21] on the day immediately before the market effective date of the reverse stock split in the security.[22] The Exchange also proposes to terminate the regulatory halt and resume trading [23] in the halted security using the Nasdaq Halt Cross procedure [24] in Nasdaq Rule 4753.[25]

The Exchange represents that declaring a regulatory halt before the end of Post Market Hours on the day immediately before the market effective date of the reverse stock split in a security for which Nasdaq is the Primary Listing Market is appropriate because it would provide the Exchange

[18] *See supra,* note 9 and accompanying text (defining the term ''Primary Listing Market'').

[19] Current Nasdaq Rule 4120 does not include reverse stock splits in the enumerated circumstances in which Nasdaq may halt trading in a security. *See supra,* Section II.

[20] *See supra,* note 10 (discussing notice of the regulatory halt to market participants).

[21] *See supra,* note 8 and accompanying text (defining the term ''Post-Market Hours''). The Exchange represents that, while it does not anticipate halting a security that is undergoing a reverse stock split sooner than 7:50 p.m. on the day immediately before the market effective date of the reverse stock split in the security, the Exchange may halt trading sooner than 7:50 p.m. for other reasons as described in Nasdaq Equity 4, Section 4120. *See supra,* note 10.

[22] *See* proposed Nasdaq Rule 4120(a)(14). The Exchange represents that once post-market trading closes at 8:00 p.m. all orders for the halted security will be cancelled. *See supra,* Section II.

[23] *See supra,* note 11 (discussing notice of termination of the regulatory halt to market participants). The Exchange represents that Nasdaq may change the resumption time if, for example, there was an Extraordinary Market Activity that could interfere with a fair and orderly 9:00 a.m. resumption. *See supra,* note 11.

[24] *See supra,* note 5 and accompanying text (discussing the Nasdaq Halt Cross).

[25] *See* proposed Nasdaq Rule 4753(b). The Exchange also proposes to modify Rule 4120(c)(7)(A) to include the non-discretionary regulatory halt authority proposed in Rule 4120(a)(14) in the reopening process currently applicable to trading halts under Rules 4120(a)(1), (4), (5), (6), (9), (10) and (11). *See supra,* Section II.

with explicit, non-discretionary authority to declare a regulatory halt in cases where a security is undergoing a significant corporate action that could cause investor or market confusion, such as where a security for which Nasdaq is the Primary Listing Market is undergoing a reverse stock split.[26] The Exchange represents that the proposed regulatory halt and delayed [27] reopening of the security subject to a reverse stock split using the Nasdaq Halt Cross [28] procedure under Nasdaq Rule 4753 would provide Nasdaq [29] and market participants [30] with the time necessary to adjust for, as well as detect and correct order entry or other system errors associated with, the reverse stock split, thus preventing such errors from disrupting or otherwise having a material effect on the market.[31] The Exchange further represents that using the Nasdaq Halt Cross process under Nasdaq Rule 4753 for terminating the proposed halt and resuming trading on the security is consistent with the process used for other securities halted under Nasdaq Rule 4120.[32]

The Commission finds that the proposed rule change is reasonably designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest by providing greater transparency and certainty with respect to the manner in which trading in a security for which Nasdaq is the Primary Listing Market will be halted due to a reverse stock split in the security, as well as the process through which the regulatory halt for the security will be implemented and terminated. The Commission also finds the proposal is reasonably designed to promote fair and orderly trading on the Exchange by reducing the potential for order entry or other system-related errors associated with a reverse stock split in a security for which Nasdaq is the Primary Listing Market. Finally, the Commission finds that using the Nasdaq Halt Cross process under Rule 4753 to terminate the proposed regulatory halt and reopen the security, as proposed, raises no novel regulatory issues, as it is consistent with the process generally used by Nasdaq to terminate a trading halt and reopen trading in a security halted for other reasons under Nasdaq Rule 4120.

For the forgoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NASDAQ–2023–036 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NASDAQ–2023–036. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NASDAQ–2023–036 and should be submitted on or before December 5, 2023.

V. Accelerated Approval of Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the **Federal Register**. As noted above, Amendment No. 1 makes non-substantive clarifying changes and provides additional justification for the proposed rule change.[33] The Commission finds that Amendment No. 1 provides greater clarity to and justification for the proposal but does not materially alter the substance of the proposed rule change. These changes raise no novel issues and assist the Commission in finding that the proposal is consistent with the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[34] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[35] that the proposed rule change (SR–NASDAQ–2023–036), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

---

[26] The Exchange represents that none of the provisions in Nasdaq Rule 4120 currently provide the Exchange with authority to declare a trading halt under such circumstances. *See supra,* Section II.

[27] *See supra,* note 12 and accompanying text (discussing the proposed delayed opening for a Nasdaq-listed security undergoing a reverse stock split).

[28] *See supra,* note 5 and accompanying text.

[29] The Exchange represents that it currently processes reverse stock splits overnight, with the security undergoing a reverse stock split opening for trading at 4:00 a.m. ET in the pre-market hours (*i.e.,* the trading session between 4:00 a.m. to 9:30 a.m. ET) on a split-adjusted basis. The Exchange further represents that it is appropriate to re-open the security at 9:00 a.m. using the Nasdaq Halt Cross process, as proposed, because it gives the Exchange an opportunity to review its order book and root out any orders for a security that has undergone a reverse stock split that have not correctly adjusted to the security's new stock price. *See supra,* Section II.

[30] The Exchange represents that market participants have expressed concerns with allowing trading on an adjusted basis at 4:00 a.m. because system errors or problems with orders may go unnoticed for some time when a security that has undergone a reverse stock split opens for trading together with all other securities. The Exchange represents that in 2022, Nasdaq processed 196 reverse stock splits, compared to 35 in 2021 and 98 in 2020, and that in the first quarter of 2023, Nasdaq processed 78 reverse stock splits, with significantly more projected throughout 2023. *See supra,* Section II.

[31] *See supra,* Section II.

[32] *See supra,* Section II.

[33] *See supra,* note 4.

[34] 15 U.S.C. 78s(b)(2).

[35] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–25013 Filed 11–13–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98880; File No. SR–NYSEAMER–2023–53]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 9521 and 9522 To Correct Obsolete References To a FINRA Department

November 7, 2023.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 26, 2023, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 9521 (Purposes and Definitions) and 9522 (Initiation of Eligibility Proceeding; Member Regulation Consideration) to correct an obsolete reference to a department of the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to proposes to amend Rules 9521 (Purposes and Definitions) and 9522 (Initiation of Eligibility Proceeding; Member Regulation Consideration) to correct an obsolete reference to a FINRA department.

Background and Proposed Rule Change

In 2016, NYSE American (then known as NYSE MKT LLC) adopted disciplinary rules that are, with certain exceptions, substantially the same as the Rule 8000 Series and Rule 9000 Series of its affiliate the New York Stock Exchange LLC (''NYSE''), and which set forth rules for conducting investigations and enforcement actions and FINRA.[3] The NYSE American disciplinary rules were implemented on April 15, 2016.[4]

In adopting disciplinary rules modeled on FINRA's rules, NYSE American adopted the procedures set forth in the Rule 9520 Series for a covered person to become or remain associated with a member organization or ATP Holder notwithstanding the existence of a statutory disqualification as defined in Section 3(a)(39) of the Act, and for a current member organization or covered person to obtain relief from the eligibility or qualification requirements of the Exchange's Rules, which the rule refers to as ''eligibility proceedings.'' Rule 9521 sets forth certain definitions relating to eligibility proceedings. Rule 9521(b)(1) defines the term ''Application'' to mean FINRA's Form MC–400 for covered persons or Form MC–400A for member organizations filed with FINRA's Department of Registration and Disclosure'' (abbreviated as ''RAD'' in the Exchange's rules). Rule 9522, which governs initiation of an eligibility proceeding by the Exchange, contains references to RAD in subdivisions (b)(1), (c) and (e)(3)(A).

In 2020, FINRA changed RAD's name to ''Credentialing, Registration, Education and Disclosure'' (abbreviated as ''CRED'' in FINRA's rules) and amended, among others, FINRA Rules 9521 and 9522 to reflect the name change.[5] The Exchange proposes to conform the references in the Exchange's rules. To effectuate this change, the Exchange would retain the reference to ''FINRA's Department'' in Rule 9521(b)(1) and change the capital ''D'' in department to lowercase [sic]. The Exchange would replace ''Registration and Disclosure ('RAD')'' in Rule 9521(b)(1) with ''Credentialing, Registration, Education and Disclosure ('CRED')''. The Exchange would also replace ''RAD'' with ''CRED'' in Rules 9522(b)(1) (one reference), (c) (two references) and (e)(3)(A) (one reference).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[6] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change to Rules 9521 and 9522 to update and replace obsolete references to a FINRA department would increase the clarity and transparency of the Exchange's rules and remove impediments to and perfect the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public could more easily navigate and understand the Exchange rules. The Exchange further believes that the proposed change would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity, thereby reducing potential confusion.

[36] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 77241 (February 26, 2016), 81 FR 11311 (March 3, 2016) (SR–NYSEMKT–2016–30) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting Investigation, Disciplinary, Sanction, and Other Procedural Rules Modeled on the Rules of the New York Stock Exchange LLC and Certain Conforming and Technical Changes).

[4] *See* NYSE MKT Information Memorandum 16–02 (March 14, 2016).

[5] *See* Securities Exchange Act Release No. 90344 (November 4, 2020), 85 FR 71695 (November 10, 2020) (SR–FINRA–2020–039) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rules To Reflect Name Changes to Two FINRA Departments: The Office of Dispute Resolution and the Department of Registration and Disclosure).

[6] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[7] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather concerned with deleting and replacing obsolete references in its rules. Since the proposal does not substantively modify system functionality or processes on the Exchange, the proposed changes will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) [9] thereunder. Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) [11] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission believes that waving the 30-day operative delay is consistent with the protection of investors and the public interest, because it will allow the Exchange to correct obsolete references to a FINRA department in its rule text. Accordingly, the Commission designates the proposed rule change to be operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEAMER–2023–53 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEAMER–2023–53. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEAMER–2023–53 and should be submitted on or before December 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–25010 Filed 11–13–23; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78f(b)(8).

[8] 15 U.S.C. 78(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. IA–6478]

Notice of Intention to Cancel Registration Pursuant to Section 203(h) of the Investment Advisers Act of 1940

November 7, 2023.

Notice is given that the Securities and Exchange Commission (the "Commission") intends to issue an order, pursuant to Section 203(h) of the Investment Advisers Act of 1940 (the "Act"), cancelling the registration of Ramos, Mario, File No. 801–127334, hereinafter referred to as the "*registrant.*" Section 203(h) provides, in pertinent part, that if the Commission finds that any person registered under Section 203, or who has pending an application for registration filed under that section, is no longer in existence, is not engaged in business as an investment adviser, or is prohibited from registering as an investment adviser under section 203A, the Commission shall by order, cancel the registration of such person.

The registrant indicated on its initial and most recent Form ADV filings that it is relying on rule 203A–2(e) to register with the Commission, which provides an exemption from the prohibition on registration for an adviser that provides investment advice to all of its clients exclusively through the adviser's interactive website, except that the adviser may advise fewer than 15 clients through other means during the preceding 12 months.[1] The Commission believes, based on the facts it has, that the registrant does not advise clients through an interactive website as defined under the rule,[2] and that it is therefore prohibited from registering as an investment adviser under section 203A of the Act. Accordingly, the Commission believes that reasonable grounds exist for a finding that this registrant is no longer eligible to be registered with the Commission as an investment adviser and that the registration should be cancelled pursuant to section 203(h) of the Act.

Notice is also given that any interested person may, by December 2, 2023, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the cancellation, accompanied by a statement as to the nature of his or her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, and he or she may request that he or she be notified if the Commission should order a hearing thereon. Any such communication should be emailed to the Commission's Secretary at *Secretarys-Office@sec.gov.*

At any time after December 2, 2023, the Commission may issue an order cancelling the registration, upon the basis of the information stated above, unless an order for a hearing on the cancellation shall be issued upon request or upon the Commission's own motion. Persons who requested a hearing, or who requested to be advised as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. Any adviser whose registration is cancelled under delegated authority may appeal that decision directly to the Commission in accordance with rules 430 and 431 of the Commission's rules of practice (17 CFR 201.430 and 431).

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.*

FOR FURTHER INFORMATION CONTACT: Juliet Han, Senior Counsel at 202–551–5213; SEC, Division of Investment Management, Office of Chief Counsel, 100 F Street NE, Washington, DC 20549–8549.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.[3]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–24991 Filed 11–13–23; 8:45 am]

BILLING CODE 8011–01–P

[1] Section 203A of the Act generally prohibits an investment adviser from registering with the Commission unless it meets certain requirements. Rule 203A–2 provides exemptions from the prohibition on Commission registration in section 203A of the Act. Rule 203A–2(e) exempts from the prohibition on Commission registration certain investment advisers that provide advisory services through the internet, as described above. *See Exemption for Certain Investment Advisers Operating Through the internet,* Investment Advisers Act Release No. 2091 (December 12, 2002), *available at https://www.sec.gov/rules/final/ia-2091.htm* (''internet Adviser Exemption Adopting Release''). Effective September 19, 2011, rule 203A–2(f) was renumbered as rule 203A–2(e). *See Rules* Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 3221 (June 22, 2011), *available at http://www.sec.gov/rules/final/2011/ia-3221.pdf.*

[2] Rule 203A–2(e) defines ''interactive website'' as a website in which computer software-based models or applications provide investment advice to clients based on personal information provided by each client through the website. An adviser relying on the exemption may not use its advisory personnel to elaborate or expand upon the investment advice provided by its interactive website, or otherwise provide investment advice to its internet clients, except as permitted by the rule's de minimis exception. Such exception permits an adviser relying on the rule to advise clients through means other than its interactive website, so long as the adviser had fewer than 15 of these non-internet clients during the preceding 12 months. See internet Adviser Exemption Adopting Release, *id.*

[3] 17 CFR 200.30–5(e)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98876; File No. SR–NYSEARCA–2023–74]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 10.9521 and 10.9522 To Correct Obsolete References to a FINRA Department

November 7, 2023.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4 thereunder,[2] notice is hereby given that on October 26, 2023, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 10.9521 (Purposes and Definitions) and 10.9522 (Initiation of Eligibility Proceeding; Member Regulation Consideration) to correct an obsolete reference to a department of the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to proposes to amend Rules 10.9521 (Purposes and Definitions) and 10.9522 (Initiation of Eligibility Proceeding; Member Regulation Consideration) to correct an obsolete reference to a FINRA department.

Background and Proposed Rule Change

In 2019, NYSE Arca adopted disciplinary rules based on the text of the Rule 8000 and Rule 9000 Series of its affiliate NYSE American LLC (''NYSE American''), with certain changes. The NYSE American disciplinary rules are, in turn, substantially the same as the Rule 8000 Series and Rule 9000 Series of FINRA and the New York Stock Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

LLC.[3] The NYSE Arca disciplinary rules were implemented on May 27, 2019.[4]

In adopting disciplinary rules modeled on FINRA's rules, NYSE Arca adopted procedures set forth in the Rule 10.9520 Series for a covered person to become or remain associated with an ETP Holder, OTP Holder or OTP Firm notwithstanding the existence of a statutory disqualification as defined in Section 3(a)(39) of the Act, and for a current ETP Holder, OTP Holder, OTP Firm or covered person to obtain relief from the eligibility or qualification requirements of the Exchange's Rules, which the rule refers to as ''eligibility proceedings.'' Rule 10.9521 sets forth certain definitions relating to eligibility proceedings. Rule 10.9521(b)(1) defines the term ''Application'' to mean FINRA's Form MC–400 for covered persons or Form MC–400A for ETP Holders, OTP Holders or OTP Firms filed with FINRA's Department of Registration and Disclosure'' (abbreviated as ''RAD'' in the Exchange's rules). Rule 10.9522, which governs initiation of an eligibility proceeding by the Exchange, contains references to RAD in subdivisions (b)(1), (c) and (e)(3)(A).

In 2020, FINRA changed RAD's name to ''Credentialing, Registration, Education and Disclosure'' (abbreviated as ''CRED'' in FINRA's rules) and amended, among others, FINRA Rules 9521 and 9522 to reflect the name change.[5] The Exchange proposes to conform the references in the Exchange's rules. To effectuate this change, the Exchange would retain the reference to ''FINRA's Department'' in Rule 10.9521(b)(1) and change the capital ''D'' in department to lowercase. The Exchange would replace ''Registration and Disclosure ('RAD')'' in Rule 10.9521(b)(1) with ''Credentialing, Registration, Education and Disclosure ('CRED')''. The Exchange would also replace ''RAD'' with ''CRED'' in Rules 10.9522(b)(1) (one reference), (c) (two references) and (e)(3)(A) (one reference).

[3] *See* Securities Exchange Act Release No. 85639 (April 12, 2019), 84 FR 16346 (April 18, 2019) (SR–NYSEArca–2019–15) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Investigation, Disciplinary, Sanction, and Other Procedural Rules Modeled on the Rules of the Exchange's Affiliate NYSE American LLC).

[4] *See* NYSE Arca Equities RB–19–060 & NYSE Arca Options RB–19–02 (April 26, 2019).

[5] *See* Securities Exchange Act Release No. 90344 (November 4, 2020), 85 FR 71695 (November 10, 2020) (SR–FINRA–2020–039) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rules To Reflect Name Changes to Two FINRA Departments: The Office of Dispute Resolution and the Department of Registration and Disclosure).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[6] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change to Rules 10.9521 and 10.9522 to update and replace obsolete references to a FINRA department would increase the clarity and transparency of the Exchange's rules and remove impediments to and perfect the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public could more easily navigate and understand the Exchange rules. The Exchange further believes that the proposed change would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity, thereby reducing potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[7] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather concerned with deleting and replacing obsolete references in its rules. Since the proposal does not substantively modify system functionality or processes on the Exchange, the proposed changes will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(8).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder. Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission believes that waving the 30-day operative delay is consistent with the protection of investors and the public interest, because it will allow the Exchange to correct obsolete references to a FINRA department in its rule text. Accordingly, the Commission designates the proposed rule change to be operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings

[8] 15 U.S.C. 78(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2023–74 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2023–74. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2023–74 and should be submitted on or before December 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–25014 Filed 11–13–23; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12), (59).

DEPARTMENT OF STATE

[Public Notice: 12264]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: "Nineteenth-Century Photography Now" Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Nineteenth-Century Photography Now'' at the J. Paul Getty Museum at the Getty Center, Los Angeles, California, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–24997 Filed 11–13–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12261]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: "Crafting Modernity: Design in Latin America, 1940–1980" Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Crafting Modernity: Design in Latin America, 1940–1980'' at The Museum of Modern Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–25004 Filed 11–13–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12159]

60-Day Notice of Proposed Information Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *January 16, 2024.*

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2023–0027'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: informationcollections@state.gov.*

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery
- *OMB Control Number:* 1405–0193
- *Type of Request:* Extension of a Currently Approved Collection
- *Originating Office:* Office of Directives Management, A/GIS/DIR
- *Form Number:* Various public surveys
- *Respondents:* Individuals responding to Department of State customer service evaluation requests
- *Estimated Number of Respondents:* 2,000,000
- *Estimated Number of Responses:* 2,000,000
- *Average Time per Response:* 3.5 minutes
- *Total Estimated Burden Time:* 116,667 annual hours
- *Frequency:* Once per request
- *Obligation to Respond:* Voluntary

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The information collection activity will garner qualitative customer feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. This qualitative feedback will provide insights into customer perceptions, experiences, and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative, and actionable communications between the Agency and its customers. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Methodology

Respondents will fill out a brief customer survey after completing their interaction with a Department Program Office or Embassy. Surveys are designed to gather feedback on the customer's experiences.

Zachary A. Parker,

Director, Office of Directives Management, Department of State.

[FR Doc. 2023–25045 Filed 11–13–23; 8:45 am]

BILLING CODE 4710–24–P

SUSQUEHANNA RIVER BASIN COMMISSION

Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will conduct its regular business meeting on December 14, 2023 in Corning, New York. Details concerning the matters to be addressed at the business meeting are contained in the Supplementary Information section of this notice. Also the Commission published a document in the **Federal Register** on October 16, 2023, concerning its public hearing on November 2, 2023, in Harrisburg, Pennsylvania.

DATES: The meeting will be held on Thursday, December 14, 2023, at 9 a.m.

ADDRESSES: This public meeting will be conducted in person and digitally from the Corning Radisson, 125 Dennison Parkway East, Corning, New York 14830.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: 717–238–0423; fax: 717–238–2436.

SUPPLEMENTARY INFORMATION: The business meeting will include actions or presentations on the following items: (1) presentation of the William Jeanes Award; (2) approval of contracts, grants and agreements; (3) a motion to release a proposed general permit for public comment; (4) a motion to release a proposed rulemaking for public comment; (5) ratification of settlement agreements for regulatory violations; and (6) actions on 20 regulatory program projects.

This agenda is complete at the time of issuance, but other items may be added, and some stricken without further notice. The listing of an item on the agenda does not necessarily mean that the Commission will take final action on it at this meeting. When the Commission does take final action, notice of these actions will be published in the **Federal Register** after the meeting. Any actions specific to projects will also be provided in writing directly to project sponsors.

The meeting will be conducted both in person at the Corning Radisson, 125 Denison Parkway East, Corning, New York and digitally. The public is invited to attend the Commission's business meeting. You can access the Business Meeting remotely via Zoom: *https://us02web.zoom.us/j/82472805136?pwd=VlpHaElpeWF2U0RhWVFQRHhTbU40UT09;* Meeting ID 824 7280 5136; Passcode: SRBC4423! or via telephone: 309–205–3325 or 312–626–6799; Meeting ID 824 7280 5136.

Written comments pertaining to items on the agenda at the business meeting may be mailed to the Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pennsylvania 17110–1788, or submitted electronically at the link Business Meeting Comments. Such comments are due to the Commission on or before December 11, 2023. Comments will not be accepted at the business meeting noticed herein.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: November 8, 2023.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2023–25077 Filed 11–13–23; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Approvals by Rule for projects by the Susquehanna River Basin Commission during the period set forth in **DATES.**

DATES: October 1–31, 2023.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.gov.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22 (f) for the time period specified above.

Water Source Approval—Issued Under 18 CFR 806.22(f)

1. JKLM Energy, LLC; Pad ID: TSF–12; ABR–202310001; Lawrence Township, Tioga County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: October 2, 2023.

2. RENEWAL—BKV Operating, LLC; Pad ID: Mattocks 1; ABR–201110002.R2; Washington Township, Wyoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 13, 2023.

3. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Bouse Drilling Pad #1; ABR–201110008.R2; Monroe Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: October 13, 2023.

4. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Laurel; ABR–201110004.R2; Overton Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: October 13, 2023.

5. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Parkhurst; ABR–201309017.R2; Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: October 13, 2023.

6. RENEWAL—EQT ARO LLC; Pad ID: Elbow F&G Pad D; ABR–201309013.R2; Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 13, 2023.

7. RENEWAL—EQT ARO LLC; Pad ID: Kenmar HC Pad A; ABR–201309014.R2; Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 13, 2023.

8. RENEWAL—EQT ARO LLC; Pad ID: Mountain Meadow Lodge Pad B; ABR–201709005.R1; McIntyre Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 13, 2023.

9. RENEWAL—Seneca Resources Company, LLC; Pad ID: Gamble Pad K; ABR–201309018.R2; Lewis Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 13, 2023.

10. RENEWAL—SWN Production Company, LLC; Pad ID: Heckman Hiduk (Pad GS); ABR–201310003.R2; Herrick Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: October 13, 2023.

11. RENEWAL—SWN Production Company, LLC; Pad ID: Salt Lick Hunting Club-Range-Pad59; ABR–201310002.R2; New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: October 13, 2023.

12. Seneca Resources Company, LLC; Pad ID: Mitcheltree 6450; ABR–202310002; Richmond Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 15, 2023.

13. RENEWAL—Coterra Energy Inc.; Pad ID: PavelskiJ Pad 1; ABR–201810001.R1; Gibson Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 22, 2023.

14. RENEWAL—Inflection Energy (PA) LLC; Pad ID: Bennett Well Pad; ABR–201308015.R2; Eldred Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 22, 2023.

15. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: BELLOWS (03 078) L; ABR–201610001.R1; Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: October 22, 2023.

16. RENEWAL—Seneca Resources Company, LLC; Pad ID: Chappell 855; ABR–201110009.R2; Middlebury Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 22, 2023.

17. RENEWAL—Seneca Resources Company, LLC; Pad ID: Gamble Pad A; ABR–201110013.R2; Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: October 22, 2023.

18. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: DCNR 594 (02 200); ABR–201810002.R1; Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: October 23, 2023.

19. RENEWAL—Coterra Energy Inc.; Pad ID: WilliamsD P1; ABR–201110018.R2; Brooklyn Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: October 26, 2023.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: November 8, 2023.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2023–25078 Filed 11–13–23; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Grandfathering (GF) Registration Notice

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Grandfathering Registration for projects by the Susquehanna River Basin Commission during the period set forth in **DATES.**

DATES: October 1–31, 2023.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.gov.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists GF Registration for projects described below, pursuant to 18 CFR part 806, subpart E, for the time period specified above: Centre Concrete Company—State College RMC Facility, GF Certificate No. GF–202310265, College Township, Centre County, Pa.; consumptive use; Issue Date: October 24, 2023.Hanover Foods Corporation—Centre Hall Facility, GF Certificate No. GF–202310266, Potter Township, Centre County, Pa.; Wolfe Well and consumptive use; Issue Date: October 24, 2023.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: November 8, 2023.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2023–25079 Filed 11–13–23; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2023–0002–N–34]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Request (ICR) summarized below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On August 18, 2023, FRA published a notice providing a 60-day period for public comment on the ICR.

DATES: Interested persons are invited to submit comments on or before December 13, 2023.

ADDRESSES: Written comments and recommendations for the proposed ICR should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the particular ICR by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Arlette Mussington, Information Collection Clearance Officer, at email: *arlette.mussington@dot.gov* or telephone: (571) 609–1285 or Ms. Joanne Swafford, Information Collection Clearance Officer, at email: *joanne.swafford@dot.gov* or telephone: (757) 897–9908.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On August 18, 2023, FRA published a 60-day notice in the **Federal Register** soliciting public comment on the ICR for which it is now seeking OMB approval. *See* 88 FR 56698. FRA has received no comments related to the proposed collection of information.

Before OMB decides whether to approve this proposed collection of information, it must provide 30-days' notice for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Locomotive Cab Sanitation.

OMB Control Number: 2130–0552.

Abstract: FRA's locomotive cab sanitation standards, 49 CFR 229.137 and 229.139, prescribe minimum standards for the locomotive cab sanitation compartment, including the toilet facility. FRA uses the information collection associated with these provisions to promote rail safety and locomotive crew member health by ensuring crew member access to a functioning and sanitary toilet facility and that railroads timely remediate defective and unsanitary conditions in the sanitation compartment.

Type of Request: Extension without change (with changes in estimates) of a currently approved information collection.

Affected Public: Businesses (Railroads).

Form(s): N/A.

Respondent Universe: 784 railroads.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 113,256.

Total Estimated Annual Burden: 1,271 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $84,294.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Christopher S. Van Nostrand,

Acting Deputy Chief Counsel.

[FR Doc. 2023–24976 Filed 11–13–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Meeting of the Transit Advisory Committee for Safety

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: The Federal Transit Administration (FTA) announces a public meeting of the Transit Advisory Committee for Safety (TRACS).

DATES: The TRACS meeting will be held on December 6, 2023, from 10:00 a.m. to 5:00 p.m., and December 7, 2023, from 10:00 a.m. to 2:00 p.m., Eastern Time. This will be a hybrid meeting, taking place both in person at the U.S. Department of Transportation (DOT) Headquarters and virtually via Zoom for Government. Requests to attend the meeting in person or virtually must be received no later than November 29, 2023. Requests for disability accommodations must be received no later than November 29, 2023. Requests to verbally address the committee during the meeting must be submitted with a written copy of the remarks to DOT no later than November 29, 2023. Requests to submit written materials to be reviewed during the meeting must be received no later than November 29, 2023.

ADDRESSES: The meeting will be held in person at DOT Headquarters, 1200 New Jersey Avenue SE, Washington, District of Columbia, 20590 and virtually via Zoom for Government. Any committee related requests should be sent by email to *TRACS@dot.gov.* The virtual meeting's online access link and a detailed agenda will be provided upon registration. They will also be posted on the TRACS web page at: *https://www.transit.dot.gov/regulations-and-guidance/safety/transit-advisory-committee-safety-tracs* one week in advance of the meeting. A copy of the meeting minutes and other TRACS related information will also be available on the TRACS web page.

FOR FURTHER INFORMATION CONTACT: Joseph DeLorenzo, TRACS Designated Federal Officer, Associate Administrator, FTA Office of Transit Safety and Oversight, *Joseph.DeLorenzo@dot.gov;* or Bridget Zamperini, TRACS Program Manager, FTA Office of Transit Safety and Oversight, (202) 366–0306, or *TRACS@dot.gov.*

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, 5 U.S.C. app. 2). TRACS is composed of up to 25 members representing a broad base of perspectives on transit safety necessary to discharge its responsibilities. Please see the TRACS web page for additional information at *https://www.transit.dot.gov/regulations-and-guidance/safety/transit-advisory-committee-safety-tracs.*

I. Background

The U.S. Secretary of Transportation (Secretary) established TRACS in accordance with FACA to provide information, advice, and recommendations to the Secretary and FTA Administrator on matters relating to the safety of public transportation systems.

II. Agenda

- Welcome Remarks and Introductions
- Overview of Hybrid Meeting Platform Functions
- Review of Recommendations: Reducing Bus Collisions
- Review of Recommendations: Advancing Rider and Worker Safety
- Review of Recommendations: Cyber and Data Security Systems
- Public Comments
- Summary of Deliverables, Next Steps, and Concluding Remarks

III. Public Participation

The in-person attendance option will be open to the public on a first come, first served basis, as space is limited. Members of the public who wish to attend in-person are asked to register via email by submitting their name and affiliation to the email address listed in the **ADDRESSES** section. The virtual attendance option does not have restrictions. Members of the public who wish to attend virtually also are asked to register via email by submitting their name and affiliation to the email address listed in the **ADDRESSES** section.

DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the email address listed in the **ADDRESSES** section.

There will be a total of 60 minutes allotted for oral comments from members of the public at the meeting. To accommodate as many speakers as possible, the time for each commenter may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, to include the individual's name, address, and organizational affiliation to the email address listed in the **ADDRESSES** section.

Written and oral comments for consideration by TRACS during the meeting must be submitted no later than the deadline listed in the **DATES** section to ensure transmission to TRACS members prior to the meeting. Comments received after that date will be distributed to the members but may not be reviewed prior to the meeting.

Joseph P. DeLorenzo,

Associate Administrator for Transit Safety and Oversight.

[FR Doc. 2023–25090 Filed 11–13–23; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2023–0018]

Beat the Street Interiors, Inc.—Grant of Petition for Temporary Exemption From Shoulder Belt Requirement for Side-Facing Seats on Motorcoaches

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of grant of petition for temporary exemption.

SUMMARY: This notice grants the petition of Beat the Street Interiors, Inc. (''BTS'') for a temporary exemption from a shoulder belt requirement of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant crash protection,'' for side-facing seats on motorcoaches. This grant permits the petitioner to install Type 1 seat belts (lap belt only) at side-facing seating positions instead of the Type 2 seat belts (lap and shoulder belts) required by FMVSS No. 208. After reviewing the petition, the agency has determined that the requested exemption is warranted to enable the petitioner to sell a vehicle whose overall level of safety or impact protection is at least equal to that of a nonexempted vehicle.

DATES: This exemption applies to the petitioner's motorcoaches produced from November 14, 2023 until November 14, 2025.

FOR FURTHER INFORMATION CONTACT: Callie Roach, Office of the Chief Counsel, NCC–200, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC, 20590. Telephone: 202–366–2992; Fax: 202–366–3820.

SUPPLEMENTARY INFORMATION:

I. Relevant Legal Authority and Regulations

a. Statutory Authority for Temporary Exemptions

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified as 49 U.S.C. Chapter 301, provides the Secretary of Transportation authority to exempt, on a temporary basis, under specified circumstances, and on terms the Secretary considers appropriate, motor vehicles from a motor vehicle safety standard or bumper standard. This authority is set forth in 49 U.S.C. 30113. The Secretary has delegated the authority for implementing this section to NHTSA.[1]

NHTSA established 49 CFR part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards,* to implement the statutory provisions concerning temporary exemptions. Under Part 555 subpart A, a vehicle manufacturer seeking an exemption must submit a petition for exemption containing specified information. Among other things, the petition must set forth (a) the reasons why granting the exemption would be in the public interest and consistent with the objectives of the Safety Act, and (b) information showing that the manufacturer satisfies one of four bases for an exemption.[2] The petitioner is applying on the basis that compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles (*see* 49 CFR 555.6(d)). A manufacturer is eligible for an exemption on this basis only if NHTSA determines the exemption is for not more than 2,500 vehicles to be sold in the U.S. in any 12-month period. An exemption on this basis may be granted for not more than two years but may be renewed upon reapplication.[3]

b. Seat Belt Requirements for Over-the-Road Buses in FMVSS No. 208

On November 25, 2013, NHTSA published a final rule amending FMVSS No. 208 to require seat belts for each passenger seating position in all new over-the-road buses (OTRBs) (regardless of gross vehicle weight rating (GVWR)), and all other buses with GVWRs greater than 11,793 kilograms (kg) (26,000 pounds (lbs.)) (with certain exclusions).[4]

In the notice of proposed rulemaking (NPRM) preceding the final rule (75 FR 50958, August 18, 2010), NHTSA proposed to permit manufacturers the option of installing either a Type 1 (lap belt) or a Type 2 (lap and shoulder belt) on side-facing seats.[5] The proposed option was consistent with a provision in FMVSS No. 208 that allows lap belts for side-facing seats on buses with a GVWR of 4,536 kg (10,000 lbs.) or less. NHTSA proposed the option because the agency was unaware of any demonstrable increase in associated risks using lap belts when compared to using lap and shoulder belts on side-facing seats. In the NPRM, NHTSA noted that[6] ''a study commissioned by the European Commission regarding side-facing seats on minibuses and motorcoaches found that due to different seat belt designs, crash modes and a lack of real-world data, it cannot be determined whether a lap belt or a lap/shoulder belt would be the most effective.''[7]

However, after the NPRM was published, the Motorcoach Enhanced Safety Act of 2012 was enacted as part of the Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141 (July 6, 2012). Section 32703(a) of MAP–21 directed the Secretary of Transportation (authority delegated to NHTSA) to ''prescribe regulations requiring safety belts to be installed in motorcoaches at each designated seating position.''[8] As MAP–21 defined ''safety belt'' to mean an integrated lap and shoulder belt, the final rule amended FMVSS No. 208 to require lap and shoulder belts at all designated seating positions, including side-facing seats, on OTRBs.[9]

Even as it did so, however, the agency reiterated its view that ''the addition of a shoulder belt at [side-facing seats on light vehicles] is of limited value, given the paucity of data related to side facing seats.''[10] NHTSA also reiterated that there have been concerns expressed in literature about shoulder belts on side-facing seats, noting in the final rule that, although the agency has no direct evidence that shoulder belts may cause serious neck injuries when applied to side-facing seats, there are simulation data indicative of potential carotid artery injury when the neck is loaded by the shoulder belt.[11] The agency also noted that Australian Design Rule ADR 5/04, ''Anchorages for Seatbelts,'' specifically prohibits shoulder belts for side-facing seats.

Given that background, and believing there would be few side-facing seats on OTRBs, NHTSA stated in the November 2013 final rule that manufacturers may petition NHTSA for a temporary exemption under 49 CFR part 555 to install lap belts instead of lap and shoulder belts at side-facing seats.[12] NHTSA further explained that a manufacturer could seek such an exemption on the basis that the applicant is otherwise unable to sell a vehicle whose overall level of safety is at least equal to that of an non-exempted vehicle, stating that the agency would be receptive to an argument that, for side-facing seats, lap belts provide an equivalent level of safety to lap and shoulder belts.[13]

II. Petition From BTS

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, BTS, a final-stage manufacturer of entertainer motorcoaches, submitted a petition on September 13, 2022, asking NHTSA for a temporary exemption from the shoulder belt requirement of FMVSS No. 208 for side-facing seats on its vehicles. The petitioner seeks to install Type 1 seat belts (lap belt only) at side-facing seating positions, instead of Type 2 seat belts (lap and shoulder belts) as required by FMVSS No. 208. The basis for the petition is that compliance would prevent the petitioner from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles (49 CFR 555.6(d)).[14]

---

[1] 49 CFR 1.95.

[2] 49 CFR 555.5(b)(5) and 555.5(b)(7).

[3] 555.8(b) and 555.8(e).

[4] 78 FR 70415 (November 25, 2013); response to petitions for reconsideration, 81 FR 19902 (April 6, 2016). The final rule became effective November 28, 2016 for buses manufactured in a single stage, and a year later for buses manufactured in more than one stage. The requirement is found at FMVSS No. 208 S4.4.5.1.2(c).

[5] 75 FR at 50971.

[6] 75 FR at 50971–50972.

[7] *http://ec.europa.eu/enterprise/automotive/projects/safety_consid_long_stg.pdf.*

[8] MAP–21 states at § 32702(6) that ''the term 'motorcoach' has the meaning given the term 'over-the-road bus' in section 3038(a)(3) of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note), but does not include a bus used in public transportation provided by, or on behalf of, a public transportation agency; or a school bus, including a multifunction school activity bus.'' Section 3038(a)(3) (49 U.S.C. 5310 note) states: ''The term 'over-the-road bus' means a bus characterized by an elevated passenger deck located over a baggage compartment.''

[9] For side-facing seats on buses other than OTRBs, in the final rule NHTSA permitted either lap or lap/shoulder belts at the manufacturer's option.

[10] 78 FR at 70448, quoting from the agency's Anton's Law final rule which required lap/shoulder belts in forward-facing rear seating positions of light vehicles, 59 FR 70907.

[11] Fildes, B., Digges, K., ''Occupant Protection in Far Side Crashes,'' Monash University Accident Research Center, Report No. 294, April 2010, pg. 57.

[12] 78 FR at 70448.

[13] *Id.*

[14] The petition is similar to petitions for temporary exemption NHTSA received from 14 other final stage manufacturers on the same shoulder belt requirement of FMVSS No. 208 for side-facing seats on entertainer buses. The first petition was submitted by Hemphill Brothers

A copy of the petition has been placed in the docket listed in the heading of this notice. To view the petition, go to *http://www.regulations.gov* and enter the docket number in the heading.

c. Brief Overview of the Petition

BTS states that it is a final-stage manufacturer of over-the-road buses and customizes motorcoaches to meet the needs of its entertainer clients and other specialized customers. BTS states that it typically receives a bus shell [15] from a manufacturer of incomplete vehicles and then builds out the complete interior of the vehicle.[16] The petitioner states that the motorcoaches it completes are primarily used for touring artists and their crews.[17] BTS states that it is a small business and expects to manufacture no more than 14 vehicles during the exemption period.[18]

Pursuant to 49 CFR 555.6(d), an application must provide ''[a] detailed analysis of how the vehicle provides the overall level of safety or impact protection at least equal to that of nonexempt vehicles.''

BTS reiterates the agency's discussion from the August 2010 NPRM and November 2013 seat belt final rule, summarized above.[19] BTS also references the 14 petitions that NHTSA has granted to other similar manufacturers.[20] BTS states that NHTSA has not conducted testing on the impact or injuries to passengers in side-facing seats in motorcoaches, so ''there is no available credible data that supports requiring a Type 2 belt at the side-facing seating positions.'' [21] BTS states that it believes that if not exempted from the requirement, BTS will be required to offer its customers ''a motorcoach with a safety feature that could make the occupants less safe, or certainly at least no more safe, than if the feature was not installed.'' [22]

Pursuant to 49 CFR 555.5(b)(7), a petitioner must state why granting an exemption allowing it to install Type 1 instead of Type 2 seat belts in side-facing seats would be in the public interest and consistent with the objectives of the Safety Act.

The petitioner states that granting an exemption would enable it to sell vehicles with Type 1 lap belts on its side-facing seats.[23] BTS further states that granting this petition will provide relief to a small business.[24] Additionally, because this petition follows NHTSA's grant of 14 similar petitions, BTS states that granting this exemption will assist in providing a consistent, objective standard that is easy for manufacturers to understand and meet.[25]

BTS also states its belief that providing Type 1 belts at side-facing seats is consistent with the objectives of the Safety Act because it allows the manufacturer to determine the best approach to motor vehicle safety depending on the intended use of the vehicle and its overall design, and is consistent with current analysis of the NHTSA and the European Commission that indicates no demonstrable difference in risk between the two types of belts when installed in sideways-facing seats.[26]

In support of its petition, BTS also states that it produces only a small number of motorcoaches annually, expecting to manufacture only about 14 motorcoaches under the period of exemption, well below the limit of 2,500 vehicles.[27]

The petitioner also indicates that it expects to seek to renew this exemption, if granted, at the end of the exemption period.[28]

III. Receipt Notice Seeking Comments

On April 26, 2023, NHTSA published a notice of receipt of the petition for temporary exemption from BTS and requested comment on the petition.[29] No comments were received.

IV. Agency Analysis and Decision

The agency grants the petition. This grant will allow the petitioner to sell a vehicle whose overall level of safety or impact protection is at least equal to that of a nonexempted vehicle.

In the rulemaking implementing MAP–21's mandate for seat belts on motorcoaches, NHTSA's proposal in the NPRM was to allow manufacturers an option of installing Type 1 (lap belt) or Type 2 (lap and shoulder belt) on side-facing seats. The proposed option was consistent with a provision in FMVSS No. 208 that allows lap belts for side-facing seats on buses with a GVWR of 4,536 kg (10,000 lbs.) or less. NHTSA proposed the option because the agency was unaware of any demonstrable increase in associated risk of lap belts compared to lap and shoulder belts on side-facing seats.[30] The agency believed that lap belts were as protective as lap and shoulder belts on side-facing seats. NHTSA continues to believe this to be true.[31]

The petitioner cited discussion of safety concerns about the shoulder belt portion of a lap and shoulder belt on side-facing seats. However, it did not provide any additional information about the potential for ''serious injury'' beyond reciting what NHTSA stated on the matter in the November 2013 final rule. Accordingly, NHTSA believes that the potential safety risk at issue is theoretical; as explained in the November 2013 final rule,[32] and the agency cannot affirmatively conclude, based on available information, that shoulder belts on side-facing seats are associated with a demonstrated risk of serious neck injuries in frontal crashes. At the same time, NHTSA believes a shoulder belt is of limited value on side-facing seats for the reasons explained in the final rule. Given the uncertainties about shoulder belts on side-facing seats, the few side-facing seats there are on buses subject to the November 2013 final rule, and that FMVSS No. 208 does not require shoulder belts on side-facing seats on any other vehicle type, NHTSA is granting the petition for temporary exemption.

The grant will permit the petitioner to install Type 1 seat belts (lap belt only) at side-facing seating positions, instead of Type 2 seat belts (lap and shoulder belts) at those positions, on the OTRBs it manufactures. This exemption does not apply to forward-facing designated seating positions on the petitioner's vehicles. Under FMVSS No. 208, the forward-facing seating positions must have Type 2 lap and shoulder belts.

Leasing Company, LLC (Hemphill). (Notice of receipt of petition, 84 FR 11735 (March 28, 2019); notice of grant of petition, 84 FR 61966 (November 14, 2019)). Later, NHTSA granted 13 additional petitions submitted by All Access Coach Leasing LLC, Amadas Coach, Creative Mobile Interiors, D&S Classic Coach Inc., Farber Specialty Vehicles, Florida Coach, Inc., Geomarc, Inc., Integrity Interiors LLC, Nitetrain Coach Company, Inc., Pioneer Coach Interiors LLC, Roberts Brothers Coach Company, Russell Coachworks LLC, and Ultra Coach Inc. (Notice of receipt of the petitions, 85 FR 51550 (August 20, 2022); notice of grant of petitions, 87 FR 33299 (June 1, 2022)).

[15] The petition describes the bus shell as generally containing the following components: exterior frame; driver's seat; dash cluster, speedometer, emissions light and emissions diagnosis connector; exterior lighting, headlights, marker lights, turn signals lights, and brake lights; exterior glass, windshield and side lights with emergency exits; windshield wiper system; braking system; tires, tire pressure monitoring system and suspension; and engine and transmission.

[16] BTS petition at page 2.

[17] *Id.*

[18] *Id.*

[19] *Id.* at pages 3–5.

[20] *Id.* at page 2.

[21] *Id.* at page 5.

[22] *Id.* at page 6.

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.* at page 7.

[29] 88 FR 25445.

[30] 75 FR 50958 at pages 50971–72 (August 18, 2010).

[31] 78 FR 7041 at pages 70447–48.

[32] 78 FR 7041 at pages 70447–48

NHTSA believes that granting the petitioner's exemption request is consistent with the public interest. The exemption will enable the applicant to sell buses whose overall level of safety is at least equal to that of non-exempted vehicles. Further, we acknowledge that the petitioner is a small business as defined in 13 CFR 121.201 [33] Thus, this temporary exemption not only permits the manufacturer to sell vehicles whose overall level of safety is at least equal to that of non-exempted vehicles, but also provides relief to a small business.

A grant is consistent with the Safety Act. The requested exemption will not impact motor vehicle safety because the exempted buses will provide overall safety at least equal to that of nonexempted buses. Further, the petitioner produces a small number of affected vehicles annually. The petitioner stated that it expects to produce no more than 14 affected vehicles during the exemption period. Thus, NHTSA concludes that the petitioner will manufacture very few vehicles relative to the 2,500 per manufacturer limit set forth in the Safety Act and 49 CFR 555.6(d)(4).

Further, as explained below, in accordance with 49 CFR 555.9 and § 30113(h) of the Safety Act, prospective purchasers will also be notified of the exemption prior to making their purchasing decisions. The vehicles must have a label notifying prospective purchasers that the vehicles are exempted from the shoulder belt requirement of FMVSS No. 208 for the side-facing seats.

V. Labeling

Under 49 CFR 555.9(b), a manufacturer of an exempted vehicle must securely affix to the windshield or side window of each exempted vehicle a label containing a statement that the vehicle meets all applicable FMVSS in effect on the date of manufacture ''except for Standard Nos. [Listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA Exemption No.__.'' This label notifies prospective purchasers about the exemption and its subject. Under § 555.9(c)(2), this information must also be included on the vehicle's certification label.[34]

The text of § 555.9 does not expressly indicate how the required statement on the two labels should read in situations in which an exemption covers part, but not all, of an FMVSS. In this case, NHTSA believes that a blanket statement that the vehicle has been exempted from Standard No. 208, without an indication that the exemption is limited to the shoulder belt on side-facing seats, could be confusing. A purchaser might incorrectly believe that the vehicle has been exempted from all requirements of FMVSS No. 208. For this reason, NHTSA believes the two labels should state that the vehicle meets all applicable FMVSS ''except for the shoulder belt requirement for side-facing seats (Standard No. 208, Occupant Crash Protection), exempted pursuant to NHTSA Exemption No. 23–02.''

In accordance with 49 U.S.C. 30113(b)(3)(B)(iv), the petitioner is granted NHTSA Temporary Exemption No. EX 23–02 from the shoulder belt requirement of 49 CFR 571.208 for side-facing seats on their motorcoaches. The exemption shall remain effective for the period designated at the beginning of this document in the **DATES** section.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.95.

Ann Carlson,

Acting Administrator.

[FR Doc. 2023–25073 Filed 11–13–23; 8:45 am]

BILLING CODE 4910–59–P

[33] According to 13 CFR 121.201, the Small Business Administration's size standards regulations used to define small business concerns, manufacturers of these buses fall under North American Industry Classification System (NAICS) No. 336213, Motor Home Manufacturing, which has a size standard of 1,250 employees or fewer.

[34] 49 CFR 555.9(c)(2) refers to § 567.5(c)(7)(iii) as the regulation setting forth the certification statement final-stage manufacturers are to use in their certification labels. That reference to § 567.5(c)(7)(iii) is outdated; it should be to § 567.5(d)(2)(v)(A). The certification label requirements for final-stage manufacturers formerly were in § 567(c)(7)(iii) but the requirements were moved to § 567.5(d)(2)(v)(A) (see, 70 FR 7433; February 14, 2005).

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nominations for Appointment to the Advisory Committee on Former Prisoners of War

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is seeking nominations of qualified candidates to be considered for appointment to the Advisory Committee (Committee) on Former Prisoners of War (FPOW).

DATES: Nominations for membership on the Committee must be received *no later than 5 p.m. EST on December 15, 2023.*

ADDRESSES: All nominations should be mailed to Outreach, Transition and Economic Development (OTED), Veterans Benefits Administration (VBA), Department of Veterans Affairs, 1800 G St. NW, Washington, DC 20006 or emailed to *julian.wright2@va.gov.*

FOR FURTHER INFORMATION CONTACT: Julian Wright, Designated Federal Officer (DFO), OTED, Department of Veterans Affairs, 1800 G St. NW, Washington, DC 20006, telephone (202) 302–8629.

SUPPLEMENTARY INFORMATION: In carrying out the duties set forth, the activities of the Committee include, but are not limited to:

(1) Advising the Secretary on how VA can assist and represent FPOWs', including recommendations regarding expanding services and benefits to FPOWs' and related policy. Administrative, legislative and/or regulatory actions;

(2) Advising the Secretary on incorporating lessons learned from current, and previous, successful family research and outreach efforts that measure the impact of provided care and benefits services on FPOWs;

(3) Advising the Secretary on collaborating with family support programs within VA and engaging with other VA and non-VA advisory committees focused on specific demographics of FPOWs;

(4) Advising the Secretary on working with interagency, intergovernmental, private/non-profit, community, and Veteran service organizations to identify and address gaps in services for FPOWs;

(5) Providing such reports as the Committee deems necessary, but not less than one report per year, to the Secretary, through the DFO/VBA to describe the Committee's activities, deliberations, and findings, which may include but are not limited to: (1) identification of current challenges and recommendations for remediation related to access to care and benefits services of FPOWs; and (2) identification of current best practices in care and benefits delivery to FPOWs, and the impact of such best practices.

Authority: The Committee is authorized by statute and operates under the provisions of the Federal Advisory Committee Act (FACA). The Committee advises the Secretary on the following:

(1) The administration of benefits for Veterans who are FPOW, in the areas of service-connected compensation, dependency and indemnity compensation, health care, and rehabilitation.

(2) The use of VA care and benefits services by FPOWs, and possible adjustments to such care and benefits services.

(3) Factors that influence access to, quality of, and accountability for services and benefits for FPOWs.

Membership Criteria and Qualifications:

VA is seeking nominations for Committee membership. The Committee is composed of up to 12 members and several ex-officio members.

The members of the Committee are appointed by the Secretary of Veteran Affairs from the general public, from various sectors and organizations, including but not limited to:

(1) Veterans who are FPOWs;

(2) Appropriate representatives of Veterans who are former prisoners of war;

(3) Individuals who are recognized authorities in fields of pertinent to disabilities prevalent among former prisoners of war, including authorities in epidemiology, mental health, nutrition, geriatrics and internal medicine; and

(4) Appropriate representatives of disabled Veterans.

In accordance with the Committee Charter, the Secretary shall determine the number, terms of service, and pay and allowances of Committee members. The term of service for any member may not exceed three years. The Secretary may reappoint any Committee member for additional terms of service.

To the extent possible, the Secretary seeks members who have diverse professional and personal qualifications including but not limited to subject matter experts in the areas described above. We ask that nominations include any relevant experience information so that VA can ensure diverse Committee membership.

Requirements for Nomination Submission: Nominations should be typed (one nomination per nominator). Nomination package should include:

(1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.* specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating the willingness to serve as a member of the Committee;

(2) The nominee's contact information, including name, mailing address, telephone numbers and email address;

(3) The nominee's resume or curriculum vitae; and

(4) A summary of the nominee's experience and qualifications relative to the membership considerations described above.

Individuals selected for appointment to the Committee shall be invited to serve a two-year term. Committee members will receive a stipend for attending Committee meetings, including per diem and reimbursement for eligible travel expenses incurred.

The Department makes every effort to ensure that the membership of VA Federal advisory committees are diverse in terms of points of view represented and the committee's capabilities. Appointments to this Committee shall be made without discrimination because of a person's race, color, religion, sex, sexual orientation, gender identify, national origin, age, disability or genetic information. Nominations must state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee.

Dated: November 8, 2023.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–25020 Filed 11–13–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Loan Guaranty: Assistance to Eligible Individuals in Acquiring Specially Adapted Housing; Cost-of-Construction Index

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) announces that the aggregate amounts of assistance available under the Specially Adapted Housing (SAH) grant program have increased by 6.39% for fiscal year (FY) 2024.

DATES: The increases in the aggregate amounts outlined in this notice were effective as of October 1, 2023.

FOR FURTHER INFORMATION CONTACT: Terry Rouch, Assistant Director for Loan Policy and Valuation, Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202–632–8862 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: In accordance with 38 U.S.C. 2102(e), 38 U.S.C. 2102A(b)(2), 38 U.S.C. 2102B(b)(2), and 38 CFR 36.4411, the Secretary of Veterans Affairs announces for FY 2024 the aggregate amounts of assistance available to Veterans and Service members eligible for SAH program grants.

Section 2102(e)(2) authorizes the Secretary to increase the aggregate amounts of SAH assistance annually based on a residential home cost-of construction index. The Secretary uses the Turner Building Cost Index for this purpose. See 38 CFR 36.4411(a). Such increase will be equal to the percentage by which the Turner Building Cost Index for the most recent calendar year exceeds that of the next preceding calendar year. If, however, the Turner Building Cost Index for the most recent full calendar year is equal to or less than the next preceding calendar year, the percentage increase will be zero. See 38 CFR 36.4411(b).

In the most recent quarter for which the Turner Building Cost Index is available, second quarter 2023, the index showed an increase of 6.39% over the index value listed for second quarter 2022. Turner Construction Company, *https://www.turnerconstruction.com/cost-index* (last visited August 1, 2023). Pursuant to 38 CFR 36.4411(a), therefore, the aggregate amounts of assistance for SAH grants made pursuant to 38 U.S.C. 2101(a) and 2101(b) have increased by 6.39% for FY 2024. VA measures the calendar year from the end of the second quarter of the preceding year to the end of the second quarter of the current year for the purpose of adjusting SAH grant amounts. This calendar year period provides more up-to-date cost of construction information for a possible adjustment effective October 1 when compared to a January-through-December period, which would result in a 10-month delay in implementation.

Sections 2102A(b)(2) and 2102B(b)(2) require the Secretary to apply the same percentage calculated pursuant to section 2102(e) to grants authorized pursuant to sections 2102A and 2102B. As such, the maximum amount of assistance available under these grants has also increased by 6.39% for FY 2024.

The increases were effective as of October 1, 2023 (38 U.S.C. 2102(e), 38 U.S.C. 2102A(b)(2) and 38 U.S.C. 2102B(b)(2)).

SAH: Aggregate Amounts of Assistance Available During Fiscal Year 2024

Section 2101(a) Grants and Temporary Residence Adaptation (TRA) Grants

Effective October 1, 2023, the aggregate amount of assistance available for SAH grants made pursuant to 38 U.S.C. 2101(a) is $117,014 during FY 2024. The maximum TRA grant made to an individual who satisfies the eligibility criteria under 38 U.S.C. 2101(a) and 2102A is $47,130 during FY 2024.

Section 2101(b) Grants and TRA Grants

Effective as of October 1, 2023, the aggregate amount of assistance available for SAH grants made pursuant to 38 U.S.C. 2101(b) is $23,444 during FY 2024. The maximum TRA grant made to an individual who satisfies the eligibility Criteria under 38 U.S.C. 2101(b) and 2102A is $8,415 during FY 2024.

Section 2102B Grants

Effective October 1, 2023, the amount of assistance available for grants made pursuant to 38 U.S.C. 2102B is $107,357 during FY 2024; however, the Secretary may waive this limitation for a Veteran if the Secretary determines a waiver is necessary for the rehabilitation program of the Veteran.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, signed and approved this document on November 7, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2023–24984 Filed 11–13–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Tuesday,
No. 218 November 14, 2023

Part II

Federal Reserve System

12 CFR Part 235

Debit Card Interchange Fees and Routing; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 235

[Regulation II; Docket No. R–1818]

RIN 7100–AG67

Debit Card Interchange Fees and Routing

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice of proposed rulemaking.

SUMMARY: Regulation II implements a provision of the Dodd-Frank Act that requires the Board to establish standards for assessing whether the amount of any interchange fee received by a debit card issuer is reasonable and proportional to the cost incurred by the issuer with respect to the transaction. Under the current rule, for a debit card transaction that does not qualify for a statutory exemption, the interchange fee can be no more than the sum of a base component of 21 cents, an *ad valorem* component of 5 basis points multiplied by the value of the transaction, and a fraud-prevention adjustment of 1 cent if the issuer meets certain fraud-prevention-standards. The Board developed the current interchange fee cap in 2011 using data voluntarily reported to the Board by large debit card issuers concerning transactions performed in 2009. Since that time, data collected by the Board every other year on a mandatory basis from large debit card issuers show that certain costs incurred by these issuers have declined significantly; however, the interchange fee cap has remained the same. For this reason, the Board proposes to update all three components of the interchange fee cap based on the latest data reported to the Board by large debit card issuers. Further, the Board proposes to update the interchange fee cap every other year going forward by directly linking the interchange fee cap to data from the Board's biennial survey of large debit card issuers. Initially, under the proposal, the base component would be 14.4 cents, the *ad valorem* component would be 4.0 basis points (multiplied by the value of the transaction), and the fraud-prevention adjustment would be 1.3 cents for debit card transactions performed from the effective date of the final rule to June 30, 2025. The Board also proposes a set of technical revisions to Regulation II.

DATES: Comments must be received on or before February 12, 2024.

ADDRESSES: You may submit comments, identified by Docket No. R–1818, RIN 7100–AG67, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, and will not be modified to remove confidential, contact or any identifiable information. Public comments may also be viewed electronically or in person in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9 a.m. and 5 p.m. during Federal business weekdays.

FOR FURTHER INFORMATION CONTACT: Benjamin Snodgrass, Senior Counsel (202–263–4877) or Cody Gaffney, Senior Attorney (202–452–2674), Legal Division; or Krzysztof Wozniak, Section Chief (202–452–3878) or Elena Falcettoni, Senior Economist (202–452–2528), Division of Reserve Bank Operations and Payment Systems. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States or (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Overview

A. Summary of Proposal

A section of the Dodd-Frank Wall Street Reform and Consumer Protection Act known as the Durbin Amendment requires the Board to establish standards for assessing whether the amount of any interchange fee received by a debit card issuer is reasonable and proportional to the cost incurred by the issuer with respect to the debit card transaction.[1] The Durbin Amendment also authorizes the Board to allow for an adjustment to such interchange fee in an amount that is reasonably necessary to make allowance for costs incurred by the debit card issuer in preventing fraud in relation to debit card transactions involving that issuer.

The Board implemented these and other provisions of the Durbin Amendment in 2011 and 2012 when the Board adopted Regulation II (Debit Card Interchange Fees and Routing).[2] Under the current rule, each interchange fee received by a debit card issuer for a debit card transaction that does not qualify for a statutory exemption can be no more than the sum of (i) 21 cents (the ''base component''), (ii) 5 basis points multiplied by the value of the transaction (the ''*ad valorem* component''), and (iii) for a debit card issuer that meets certain fraud-prevention standards, a ''fraud-prevention adjustment'' of 1 cent per transaction. Together, the base component and *ad valorem* component comprise the ''interchange fee standards''; the base component, *ad valorem* component, and fraud-prevention adjustment comprise the ''interchange fee cap.''

The Board developed the current interchange fee cap using data reported to the Board by large debit card issuers on a voluntary survey that the Board conducted during the original Regulation II rulemaking. As such, the current base component, *ad valorem* component, and fraud-prevention adjustment are based on the costs incurred by large debit card issuers in connection with debit card transactions performed in 2009. Since that time, the Board has collected data from large debit card issuers on a mandatory basis every other year, as required by the Durbin Amendment.

When the Board established the interchange fee standards in current Regulation II, the Board stated that it would, over time, adjust the interchange fee standards based on reported costs, if appropriate. Similarly, with respect to the fraud-prevention adjustment, the Board stated that it would take into account data reported by large debit card issuers in the future when considering any future revisions to the fraud-prevention adjustment. The Board also noted that lower costs should result in a lower interchange fee cap as issuers become more efficient.

The data collected by the Board from large debit card issuers since the original Regulation II rulemaking show that the costs incurred by large debit card issuers in connection with debit card transactions have changed significantly over time. In particular, the costs on which the Board based the base component have nearly halved, the issuer fraud losses on which the Board based the *ad valorem* component have fallen, and the fraud-prevention costs on

[1] Public Law 110–203, section 1075, 124 Stat. 1376, 2068 (codified at 15 U.S.C. 1693*o*–2).

[2] 12 CFR part 235.

which the Board based the fraud-prevention adjustment have risen, according to key metrics of those costs.[3] As a result, the Board believes that the current interchange fee standards may no longer be effective for assessing whether, for a debit card transaction subject to the standards, the amount of any interchange fee received by a debit card issuer is reasonable and proportional to the cost incurred by the issuer with respect to the transaction. Further, the Board believes that the current fraud-prevention adjustment may not reflect an amount that is reasonably necessary to make allowance for costs incurred by the debit card issuer in preventing fraud in relation to debit card transactions involving that issuer.

For these reasons, the Board proposes to update all three components of the interchange fee cap based on the latest data reported to the Board by large debit card issuers concerning transactions performed in 2021. Under the proposal, the base component would decrease from 21.0 cents to 14.4 cents, the *ad valorem* component would decrease from 5.0 basis points (multiplied by the value of the transaction) to 4.0 basis points (multiplied by the value of the transaction), and the fraud-prevention adjustment would increase from 1.0 cents to 1.3 cents. The Board determined the proposed base component using a new methodology that is informed by the cumulative data reported to the Board every other year since the original Regulation II rulemaking. This methodology targets full cost recovery over time for a significant majority of transactions across large debit card issuers through a formula that relates the base component to a key metric of issuer costs. By contrast, the Board determined the proposed *ad valorem* component and proposed fraud-prevention adjustment using generally the same methodologies used in the original rulemaking.

In addition to updating the interchange fee cap for the first time since the original rulemaking, the proposed revisions would codify in Regulation II an approach for updating the three components of the interchange fee cap every other year going forward based on the latest data reported to the Board by large debit card issuers. By directly linking the interchange fee cap to data collected by the Board from large debit card issuers every other year, the proposed approach should ensure that the interchange fee cap will reflect changes in the costs incurred by debit card issuers. As a result, the Board believes that the proposal would ensure that, to the extent practicable, (i) the interchange fee standards will be effective going forward for assessing whether, for a transaction subject to the interchange fee standards, the amount of any interchange fee received by a debit card issuer is reasonable and proportional to the cost incurred by the issuer with respect to the transaction, and (ii) the fraud-prevention adjustment will continue to reflect an amount that is reasonably necessary to make allowance for costs incurred by the debit card issuer in preventing fraud in relation to debit card transactions involving that issuer. These future updates to the interchange fee cap would be implemented in accordance with the proposed methodology and would be published without inviting public comment.

The Board has reviewed its construction of the Durbin Amendment and original analysis regarding the costs incurred by debit card issuers that the Board may consider in establishing the interchange fee standards, and believes that this prior analysis remains sound. As such, the Board does not propose any changes to the costs considered for purposes of determining the base component or the issuer fraud losses considered for purposes of determining the *ad valorem* component. The Board also does not propose to modify the fraud-prevention costs considered for purposes of determining the fraud-prevention adjustment, or the fraud-prevention standards that large debit card issuers must meet to receive the fraud-prevention adjustment.

B. Outline of This Preamble

This preamble is divided into eight sections, including this overview section I. Section II provides additional legal background for the proposal, including a detailed description of the Durbin Amendment and current Regulation II.

Section III discusses the proposed revisions to the interchange fee standards in § 235.3. The Board proposes to determine the base component and *ad valorem* component every other year based on the latest data reported to the Board by debit card issuers with consolidated assets of $10 billion or more—referred to in this preamble as ''covered issuers''—on the Board's biennial Debit Card Issuer Survey. The base component would be determined using a new methodology that is informed by the cumulative data reported to the Board every other year since the original Regulation II rulemaking. Specifically, the base component would be the product of (i) the transaction-weighted average of per-transaction allowable costs (excluding fraud losses) across covered issuers based on the latest data reported to the Board, and (ii) a fixed multiplier codified in Regulation II.[4] The Board proposes a fixed multiplier of 3.7, which targets full cost recovery for 98.5 percent of covered issuer transactions over time based on the cumulative data reported to the Board by covered issuers since the initial Debit Card Issuer Survey.[5] The *ad valorem* component would be the median ratio of issuer fraud losses to transaction value among covered issuers (multiplied by the value of the debit card transaction), which is the same methodology the Board used to determine the *ad valorem* component during the original Regulation II rulemaking.

Initially, under the proposal, the base component would be 14.4 cents and the *ad valorem* component would be 4.0 basis points (multiplied by the value of the transaction) for debit card transactions performed from the effective date of the final rule to June 30, 2025. Going forward, the Board would determine the base component and the *ad valorem* component for debit card transactions performed during the two-year period beginning July 1, 2025, based on the data reported to the Board by covered issuers on the Board's next Debit Card Issuer Survey, and would thereafter determine these amounts for each succeeding two-year period based on data reported to the Board on future Debit Card Issuer Surveys.

Section IV discusses the proposed revisions to the fraud-prevention adjustment in § 235.4. As with the interchange fee standards, the Board proposes to determine the fraud-prevention adjustment every other year based on the latest data reported to the Board by covered issuers on the biennial

[3] As described in section III.A, *infra,* the costs on which the Board based the base component include transaction-processing and transaction-monitoring costs.

[4] As described in section III.A, *infra,* the costs on which the Board based the base component include transaction-processing and transaction-monitoring costs. These costs may also be referred to as ''allowable costs (excluding fraud losses)'' or ''base component costs.''

[5] In this preamble, the term ''covered issuer transactions'' refers to debit card transactions performed with debit cards issued by covered issuers. By targeting full cost recovery for 98.5 percent of covered issuer transactions, the Board expects that, over time, the per-transaction allowable costs (excluding fraud losses) of around 98.5 percent of covered issuer transactions will be less than or equal to the base component. As discussed in section III.B, *infra,* the proposed approach would not guarantee that covered issuers will fully recover their allowable costs for the target percentage of covered issuer transactions in any particular year.

Debit Card Issuer Survey. The fraud-prevention adjustment would be the median per-transaction fraud-prevention costs among covered issuers, which is generally the same methodology the Board used to determine the fraud-prevention adjustment in 2012.

Initially, under the proposal, the fraud-prevention adjustment would be 1.3 cents for debit card transactions performed from the effective date of the final rule to June 30, 2025. Going forward, the Board would determine the fraud-prevention adjustment for debit card transactions performed during the two-year period beginning July 1, 2025, based on the data reported to the Board by covered issuers on the Board's next Debit Card Issuer Survey, and would thereafter determine the fraud-prevention adjustment for each succeeding two-year period based on data reported to the Board on future Debit Card Issuer Surveys.

Section V discusses the proposed technical revisions to Regulation II, which are generally intended to make Regulation II clearer. For example, the Board proposes to add ''covered issuer'' as a defined term in Regulation II and use this term throughout the regulation and the Official Board Commentary on Regulation II to refer to debit card issuers with consolidated assets of $10 billion or more.

Section VI discusses the proposed effective date for the revisions. The Board proposes that the revisions would, if adopted, take effect on the first day of the next calendar quarter that begins at least 60 days after the final rule is published in the **Federal Register.**

Section VII sets forth the Board's general request for comment, as well as specific questions for feedback.

Section VIII sets forth certain regulatory analyses that the Board is required to complete under the Durbin Amendment and certain other statutes, such as the Regulatory Flexibility Act and the Paperwork Reduction Act.

II. Legal Background

A. Statutory Authority

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) was enacted on July 21, 2010.[6] Section 1075 of the Dodd-Frank Act amended the Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693 *et seq.*) to add a new section 920 regarding interchange fees for debit card transactions and rules for debit card and credit card transactions.[7]

EFTA section 920(a)(2) provides that the amount of any interchange fee that an issuer may receive or charge with respect to a debit card transaction shall be reasonable and proportional to the cost incurred by the issuer with respect to the transaction.[8] EFTA section 920(a)(3) requires the Board to establish standards for assessing whether the amount of any interchange fee is reasonable and proportional to the cost incurred by the issuer with respect to the transaction. EFTA section 920(a)(4) sets forth various considerations that the Board must take into account when establishing these interchange fee standards. Specifically, the Board must consider the functional similarity between debit card transactions and checking transactions that are required within the Federal Reserve bank system to clear at par. The Board must also distinguish between (i) the incremental cost incurred by an issuer for the role of the issuer in the authorization, clearance, or settlement of a particular debit card transaction, which cost shall be considered by the Board; and (ii) other costs incurred by an issuer which are not specific to a particular debit card transaction, which costs shall not be considered by the Board.

Under EFTA section 920(a)(5)(A), the Board may allow for an adjustment to the interchange fee received or charged by an issuer under the interchange fee standards if such adjustment is reasonably necessary to make allowance for costs incurred by the issuer in preventing fraud in relation to debit card transactions involving the issuer, provided that the issuer complies with fraud-related standards established by the Board. The Board's fraud-related standards must, among other things, require issuers to take effective steps to reduce the occurrence of, and costs from, fraud in relation to debit card transactions, including through the development and implementation of cost-effective fraud prevention technology.

Certain issuers and debit card transactions are exempt from the interchange fee standards. EFTA section 920(a)(6) exempts any issuer that, together with its affiliates, has assets of less than $10 billion.[9] EFTA section 920(a)(7)(A)(i) exempts an interchange fee charged or received with respect to a debit card transaction in which a person uses a debit card or general-use prepaid card that has been provided to a person pursuant to a Federal, State, or local government-administered payment program, in which the person may only use the debit card or general-use prepaid card to transfer or debit funds, monetary value, or other assets that have been provided pursuant to such program. EFTA section 920(a)(7)(A)(ii) exempts an interchange fee charged or received with respect to a debit card transaction in which a person uses certain general-use prepaid cards.[10]

EFTA section 920(a)(3)(B) authorizes the Board to require any issuer or payment card network to provide the Board with such information as may be necessary to carry out the provisions of EFTA section 920(a). This provision additionally requires the Board, in issuing rules under EFTA section 920(a) and on at least a biannual basis thereafter, to disclose such aggregate or summary information concerning the costs incurred, and interchange fees charged or received, by issuers or payment card networks in connection with the authorization, clearance, or settlement of debit card transactions as

[6] *See* Public Law 111–203, 124 Stat. 1376 (2010).

[7] EFTA section 920 is codified at 15 U.S.C. 1693*o*–2. EFTA section 920(c)(2) defines ''debit card'' to mean any card (including a general-use prepaid card), or other payment code or device, issued or approved for use through a payment card network to debit an asset account, regardless of the purpose for which the account is established, and regardless of whether authorization is based on signature, PIN, or other means. Most of EFTA section 920's requirements relate to debit card transactions—referred to in the statute and in Regulation II as ''electronic debit transactions''—which are defined in EFTA section 920(c)(5) as transactions in which a person uses a debit card. This preamble uses the term ''debit card transaction'' interchangeably with ''electronic debit transaction.'' Similarly, this preamble uses the term ''interchange fee'' interchangeably with the statutory term ''interchange transaction fee.'' EFTA section 905(c)(8) defines ''interchange transaction fee'' as any fee established, charged, or received by a payment card network for the purpose of compensating an issuer for its involvement in an electronic debit transaction. For an overview of the debit card industry, *see* 76 FR 43393, 43395–96 (July 20, 2011).

[8] ''Issuer'' is defined in EFTA section 920(c)(9) to mean any person who issues a debit card, or credit card, or the agent of such person with respect to such card.

[9] For purposes of this exemption, EFTA section 920(a)(6) provides that the term ''issuer'' shall be limited to the person holding the asset account that is debited through a debit card transaction.

[10] Specifically, EFTA section 920(a)(7)(A)(ii) exempts an interchange fee charged or received with respect to a debit card transaction in which a person uses a plastic card, payment code, or device that is (i) linked to funds, monetary value, or assets purchased or loaded on a prepaid basis; (ii) not issued or approved for use to access or debit any account held by or for the benefit of the cardholder (other than a subaccount or other method of recording or tracking funds purchased or loaded on the card on a prepaid basis); (iii) redeemable at multiple, unaffiliated merchants or service providers, or automated teller machines; (iv) used to transfer or debit funds, monetary value, or other assets; and (v) reloadable and not marketed or labeled as a gift card or gift certificate.

the Board considers appropriate and in the public interest.[11]

B. Regulation II

The Board adopted a final rule implementing the interchange fee standards and an interim final rule implementing the fraud-prevention adjustment in July 2011.[12] In August 2012, the Board adopted a final rule amending its interim final rule regarding the fraud-prevention adjustment.[13] These rules were codified as Regulation II.

Section 235.3(a) of Regulation II implements EFTA section 920(a)(2) by providing that the amount of any interchange fee that an issuer may receive or charge with respect to a debit card transaction shall be reasonable and proportional to the cost incurred by the issuer with respect to the transaction. Section 235.3(b) implements EFTA section 920(a)(3) by providing that an issuer complies with the requirements of § 235.3(a) only if each interchange fee received or charged by the issuer for a debit card transaction is no more than the sum of (i) 21 cents and (ii) 5 basis points multiplied by the value of the transaction.[14] These amounts, together with any fraud-prevention adjustment permitted under § 235.4, comprise the interchange fee cap.

Section 235.4 implements the fraud-prevention adjustment permitted by EFTA section 920(a)(5). Specifically, § 235.4(a) allows an issuer that meets the fraud-prevention standards enumerated in § 235.4(b) to receive or charge an amount of no more than 1 cent per transaction in addition to any interchange fee it receives or charges in accordance with § 235.3. Section 235.4(b) provides that to be eligible to receive or charge the fraud-prevention adjustment, an issuer must develop, implement, and periodically review fraud-related policies and procedures meeting certain requirements. Section 235.4(c) provides that to be eligible to receive or charge a fraud-prevention adjustment, an issuer must annually notify its payment card networks that it complies with the fraud-prevention standards in § 235.4(b). Section 235.4(d) sets forth rules for when an issuer, or the appropriate agency, determines that the issuer is not eligible to receive or charge a fraud-prevention adjustment.[15]

Section 235.5 implements the statutory exemptions from the interchange fee standards. Section 235.5(a) generally provides that the interchange fee standards do not apply to an interchange fee received or charged by an issuer with respect to a debit card transaction if the issuer, together with its affiliates, has assets of less than $10 billion as of the end of the calendar year preceding the date of the transaction and holds the account that is debited. Section 235.5(b) implements the statutory exemption for government-administered payment programs. Section 235.5(c) implements the statutory exemption for certain reloadable prepaid cards.

Section 235.8 implements the data collection provisions in EFTA section 920(a)(3)(B). Specifically, § 235.8(a) provides that each issuer that is not otherwise exempt from the requirements of this part under § 235.5(a) and each payment card network shall file a report with the Board.[16] Section 235.8(b) provides that each entity required to file a report with the Board shall submit data in a form prescribed by the Board for that entity. Pursuant to this authority, the Board collects information from debit card issuers with consolidated assets of $10 billion or more every other year through the Debit Card Issuer Survey.[17] The Board also collects information from payment card networks every year through the Payment Card Network Survey.[18] The Board has published a summary of findings from these two surveys on a biennial basis since 2013, consistent with EFTA section 920(a)(3)(B).[19] The Board's most recent biennial report was published concurrently with this proposal.[20]

Appendix A to part 235 is the Official Board Commentary on Regulation II. In general, the commentary provides background material to explain the Board's intent in adopting a particular part of the regulation and examples to aid in understanding how a particular requirement is to work.[21]

III. Proposed Revisions to the Interchange Fee Standards (§ 235.3)

A. Background

As described above, EFTA section 920(a)(3) directs the Board to establish standards for assessing whether the amount of any interchange fee is reasonable and proportional to the cost incurred by the issuer with respect to the transaction. To fulfill this statutory mandate, the Board (i) defined the costs incurred by debit card issuers that the Board considers, consistent with the statute (referred to herein as ''allowable costs''), and (ii) established standards for assessing interchange fees relative to allowable costs. A brief overview of how the Board developed the interchange fee standards in current § 235.3 follows.

1. Allowable Costs

EFTA section 920(a)(4)(B) requires the Board, in establishing interchange fee standards, to distinguish between (i) the incremental cost incurred by an issuer

[11] EFTA section 920 contains various other provisions, but the proposed revisions to Regulation II discussed in this preamble would not substantively amend the provisions of Regulation II that implement these other statutory provisions. Specifically, EFTA section 920(a)(1) authorizes the Board to prescribe regulations to prevent circumvention or evasion of EFTA section 920(a). EFTA section 920(a)(8) confers upon the Board additional authority to prescribe regulations concerning network fees. EFTA section 920(b) requires the Board to prescribe regulations related to the routing of debit card transactions.

[12] Regulation II, Debit Card Interchange Fees and Routing, codified at 12 CFR part 235. *See* 76 FR 43393 (July 20, 2011) (final rule); 76 FR 43477 (July 20, 2011) (interim final rule).

[13] *See* 77 FR 46258 (Aug. 3, 2012).

[14] The Official Board Commentary on Regulation II, found in appendix A to part 235, refers to these amounts as the ''base component'' and the ''*ad valorem* component,'' respectively.

[15] The appropriate agency for a particular entity is determined pursuant to § 235.9 and EFTA section 918 (15 U.S.C. 1693*o*). For example, the Board is the appropriate agency with respect to member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than federal branches, federal Agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act.

[16] The reference to ''the requirements of this part'' in § 235.8(a) is erroneous, as debit card issuers that qualify for the exemption in § 235.5(a) are *not* exempt from the requirements of § 235.7 (network exclusivity and debit card transaction routing) or § 235.8(c) (record retention). As described in section V, *infra,* the Board proposes a technical correction to fix this error.

[17] *See* FR 3064a.

[18] *See* FR 3064b.

[19] *See* Board of Governors of the Federal Reserve System, *2011 Interchange Fee Revenue, Covered Issuers Costs, and Covered Issuer and Merchant Fraud Losses Related to Debit Card Transactions* (Mar. 5, 2013), *https://www.federalreserve.gov/paymentsystems/files/debitfees_costs_2011.pdf.*

[20] The Board's reports may be found on the Board's website. *See* Board of Governors of the Federal Reserve System, *Regulation II (Debit Card Interchange Fees and Routing): Reports and Data Collections, https://www.federalreserve.gov/paymentsystems/regii-data-collections.htm.* Additionally, on an annual basis, the Board publishes average interchange fees by network. *See* Board of Governors of the Federal Reserve System, *Regulation II (Debit Card Interchange Fees and Routing): Average Debit Card Interchange Fee by Payment Card Network, https://www.federalreserve.gov/paymentsystems/regii-average-interchange-fee.htm.*

[21] Other provisions of Regulation II implement provisions of EFTA section 920 that are not directly relevant to the proposed revisions discussed in this preamble. Specifically, § 235.6 prohibits circumvention or evasion of the interchange fee restrictions in Regulation II and prohibits an issuer from receiving net compensation from a payment card network within a calendar year. Section 235.7 sets forth rules related to network exclusivity and the routing of debit card transactions. To address certain issues related to the routing of card-not-present debit card transactions, the Board recently revised § 235.7 and the commentary thereto, with an effective date of July 1, 2023. *See* 87 FR 61217 (Oct. 11, 2022).

for the role of the issuer in the authorization, clearance, or settlement of a particular debit card transaction, which cost shall be considered by the Board; and (ii) other costs incurred by an issuer which are not specific to a particular debit card transaction, which costs shall not be considered by the Board.[22] When the Board adopted current § 235.3 in 2011, the Board identified a third category of costs that the Board is permitted, but not required, to consider: costs incurred by an issuer that are specific to a particular debit card transaction but are not incremental costs related to a debit card issuer's role in authorization, clearance, and settlement.[23]

Using this framework, the Board defined the allowable costs that the Board considered in establishing the interchange fee standards set forth in § 235.3. For reasons explained in the preamble accompanying the 2011 final rule, allowable costs comprise (i) transaction-processing costs, including fixed and variable authorization, clearance, and settlement costs, network processing fees (*e.g.,* switch fees), and the costs of processing chargebacks and other non-routine transactions; (ii) transaction-monitoring costs; and (iii) issuer fraud losses.[24] Allowable costs do not include other costs incurred by debit card issuers in connection with their debit card programs, such as corporate overhead and account-relationship costs, general debit card program costs (*e.g.,* card production and delivery costs, marketing costs, and research and development costs), or costs of non-sufficient funds handling, cardholder rewards, and cardholder inquiries.[25]

The Board has reviewed its construction of the statute and prior analysis regarding the allowable costs that the Board considered in establishing the interchange fee standards, and believes that this prior analysis remains sound. As such, the Board does not propose any changes to the allowable costs considered for purposes of the interchange fee standards.

As described below, the Board established the base component based on transaction-processing and transaction-monitoring costs, but separately assessed issuer fraud losses through the *ad valorem* component. Transaction-processing and transaction-monitoring costs are collectively referred to in this preamble as ''base component costs.''

2. Interchange Fee Standards

For reasons explained in the preamble accompanying the 2011 final rule, the Board adopted a uniform, transaction-level standard that, subject to any fraud-prevention adjustment that a covered issuer may be permitted to receive or charge under § 235.4, establishes the maximum permissible interchange fee that a covered issuer may receive for a debit card transaction subject to the interchange fee standards.[26] This maximum interchange fee is the sum of a base component and an *ad valorem* component.

To determine the base component, the Board referred to the data that the Board had collected shortly after the Dodd-Frank Act was signed into law via a voluntary survey of covered issuers concerning debit card transactions performed in the 2009 calendar year.[27] Based on these data, the Board computed the per-transaction base component costs of each covered issuer that reported such costs by summing the base component costs reported by the covered issuer and dividing this sum by the total number of debit card transactions reported by the covered issuer. The Board then arranged these per-transaction costs in ascending order from lowest- to highest-cost covered issuer.[28]

The Board observed that this distribution of per-transaction base component costs across covered issuers was quite skewed. These costs ranged from 3 cents to 66 cents per transaction, with a considerable majority of covered issuers concentrated in the range of costs below 21 cents, and a scattered set of covered issuers having significantly higher costs above 21 cents. Further, below 21 cents, the difference between the per-transaction base component costs of adjacently ranked covered issuers was small, but at around 21 cents, the distribution showed a marked discontinuity, with base component costs varying more significantly across these higher-cost covered issuers.

The Board concluded that establishing interchange fee standards to accommodate these higher-cost covered issuers would not be reasonable or proportional to the overall cost experience of the substantial majority of covered issuers.[29] For that reason, the Board adopted a base component of 21 cents per transaction. Had that base component been in effect in 2009, approximately 80 percent of covered issuers that responded to the Board's voluntary survey would have fully recovered their base component costs.[30]

The Board recognized that issuer fraud losses are distinct from the other types of allowable costs in that the amount of a fraud loss varies with the

---

[22] EFTA section 920(a)(4)(a) also requires the Board to consider the functional similarity between debit card transactions and checking transactions that are required within the Federal Reserve bank system to clear at par. For a discussion of this requirement, see section VIII.B, *infra.*

[23] The Board observed in 2011 that EFTA does not define ''other costs incurred by an issuer which are not specific to a particular electronic debit transaction,'' which the Board is prohibited from considering. *See* 76 FR 43393, 43426 (July 20, 2011). In 2010, the Board initially proposed to exclude costs that could not be attributed to any identified debit card transaction (referred to as ''fixed costs'' in the proposal), even if those costs were specific to effecting debit card transactions as a whole. *See* 75 FR 81721, 81735–36 (Dec. 28, 2010). After considering public comments, the Board at the final rule stage interpreted the category of prohibited costs to include only those costs that are not incurred in the course of effecting any debit card transaction. *See* 76 FR at 43426. Further, the Board noted that the statute is silent on those costs that are not incremental costs related to a debit card issuer's role in authorization, clearance, and settlement, but that are specific to a particular debit card transaction. *See id.* The Board determined that EFTA section 920(a)(4)(B) did not specifically instruct the Board to consider this third category of costs but did not prohibit their consideration. *See id.* The Board's interpretation of the statute was upheld by the U.S. Court of Appeals for the District of Columbia Circuit. *See NACS* v. *Board of Governors of the Federal Reserve System,* 746 F.3d 474, 488–89 (D.C. Cir. 2014). *See also* 80 FR 48684 (Aug. 14, 2015) (clarifying the treatment of transaction-monitoring costs, as required by the D.C. Circuit).

[24] *See* 76 FR at 43429–31.

[25] *See* 76 FR at 43427–29.

[26] *See* 76 FR at 43431–35.

[27] *See* Board of Governors of the Federal Reserve System, *2009 Debit Card Issuer Survey* (Sep. 13, 2010), *https://www.federalreserve.gov/paymentsystems/files/payment_card_network_survey_20100920.pdf.* The survey respondents included 66 covered issuers, representing about 57 percent of total debit card transactions by volume and 60 percent of total debit card transactions by value in 2009. However, because some covered issuers did not respond to the voluntary survey, the proportion of total debit card transactions performed in 2009 that are attributable to covered issuers (including respondents and non-respondents) was greater than 57 percent (by volume) and 60 percent (by value). The Board discussed preliminary summary findings from this survey in its 2010 proposal to establish interchange fee standards. *See* 75 FR at 81724–26. The Board subsequently published a report summarizing the data collected from the survey. *See* Board of Governors of the Federal Reserve System, *2009 Interchange Fee Revenue, Covered Issuer Costs, and Covered Issuer and Merchant Fraud Losses Related to Debit Card Transactions* (June 2011), *https://www.federalreserve.gov/paymentsystems/files/debitfees_costs.pdf.*

[28] *See* 76 FR at 43433.

[29] *See id.*

[30] In other words, for approximately 80 percent of covered issuers that responded to the Board's voluntary survey, the covered issuer's base component costs in 2009 were less than or equal to the product of 21 cents and the number of transactions involving that issuer's debit cards in 2009. However, the Board did not indicate that the Board was adopting any particular cost-recovery target across covered issuers (*i.e.,* that 80 percent of covered issuers should fully recover their base component costs) or across covered issuer transactions.

amount of the transaction.[31] For this reason, the Board determined that these fraud losses were best assessed through a separate *ad valorem* component. To determine the *ad valorem* component, the Board computed the ratio of issuer fraud losses to transaction value for each covered issuer that reported such costs in response to the voluntary survey.[32] Specifically, for each such issuer, the Board divided (i) the issuer fraud losses by (ii) the total value of the issuer's debit card transactions. The Board then sorted these ratios, expressed in basis points, in ascending order from lowest to highest.

The resulting distribution showed that the ratio of issuer fraud losses to transaction value varied considerably among covered issuers, ranging from 0.9 to 19.6 basis points, but the distribution was not skewed like that of per-transaction base component costs. For the reasons explained in the preamble accompanying the 2011 final rule, the Board adopted an *ad valorem* component of 5 basis points of the transaction value, which corresponded to the median ratio of issuer fraud losses to transaction value among covered issuers, rounded to the nearest basis point, based on the Board's voluntary survey.[33]

The Board described the foregoing methodologies for determining the base component and *ad valorem* component in the preamble accompanying the 2011 final rule. The Board did not, however, codify these methodologies in § 235.3. Rather, § 235.3(b) simply provides that each interchange fee received or charged by a debit card issuer for a debit card transaction shall be no more than the sum of 21 cents and 5 basis points multiplied by the value of the transaction.

B. Rationale for Proposal

When the Board established the interchange fee standards in current § 235.3, the Board stated that it would regularly collect data on the costs incurred by covered issuers in connection with debit card transactions and, over time, would adjust the interchange fee standards based on reported costs, if appropriate. The Board also noted that lower costs should result in a lower interchange fee cap as issuers become more efficient.[34] To date, the Board has not proposed or finalized any adjustments to the interchange fee standards in § 235.3.[35]

Consistent with EFTA section 920(a)(3)(B), the Board has surveyed covered issuers on a mandatory basis every other year since the reporting requirements in § 235.8 of Regulation II were adopted. Through these biennial surveys, the Board has collected data from covered issuers concerning the costs incurred by those issuers in connection with debit card transactions performed in calendar years 2011, 2013, 2015, 2017, 2019, and 2021. The Board has reviewed the interchange fee standards in § 235.3 in light of both the most recently collected data from 2021 and the cumulative data collected from covered issuers since the original Regulation II rulemaking. As a result of this analysis, and as described below, the Board believes that revisions to the current interchange fee standards are appropriate at this time.

While the interchange fee standards have remained the same since § 235.3 was adopted, several data points show that the allowable costs incurred by covered issuers have fallen significantly since the original Regulation II rulemaking. In particular, the Board monitors one especially important metric that approximates the base component costs of the average covered issuer transaction: the transaction-weighted average of per-transaction base component costs across covered issuers.[36] That metric was 3.9 cents in 2021, which represents a decline of nearly 50 percent since 2009 (7.7 cents) and over 23 percent since 2011 (5.1 cents), the first year for which the Board collected data on a mandatory basis.

The Board also monitors issuer fraud losses, on which the Board based the *ad valorem* component. The median ratio of issuer fraud losses to transaction value among covered issuers declined by around 15 percent from 2011 (4.7 basis points, or 5.0 basis points if rounded to the nearest basis point) to 2021 (4.0 basis points).

Taken together, these declines in base component costs and issuer fraud losses have resulted in a substantial increase in the percentage of covered issuers that fully recovered their allowable costs from 2011 (61.1 percent) to 2021 (77.4 percent).[37]

As a result of the significant decline in the allowable costs incurred by covered issuers since 2009, the Board believes that the current interchange fee standards in § 235.3 may no longer be effective for assessing whether, for a debit card transaction subject to the interchange fee standards, the amount of any interchange fee received or charged by a debit card issuer is reasonable and proportional to the cost incurred by the issuer with respect to the transaction, as required by EFTA section 920(a)(2). As such, the Board believes it is necessary to revise the interchange fee standards to reflect the decline since 2009 in base component costs and the decline over time in the ratio of issuer fraud losses to transaction value for covered issuers.

Furthermore, the Board believes that, as much as practicable, the base component and *ad valorem* component should be updated regularly and

[31] *See* 76 FR at 43431.

[32] In the preamble accompanying the 2011 final rule, the Board used the term ''per-transaction fraud losses'' for this metric, but the Board now believes that ''ratio of issuer fraud losses to transaction value'' is a more accurate description.

[33] *See* 76 FR at 43434.

[34] *See* 76 FR at 43432.

[35] In December 2022, two trade associations representing merchants submitted a rulemaking petition to the Board regarding the interchange fee standards in Regulation II. Specifically, the petitioners requested that the Board initiate a rulemaking to lower the base component from 21 cents to 9.7 cents, and eliminate or substantially reduce the *ad valorem* component and the fraud-prevention adjustment. The Board views the rulemaking petition as an additional consideration related to the proposal; however, the Board's rationale for the proposal is discussed in this section III.B.

[36] The Board computes the transaction-weighted average of per-transaction base component costs across covered issuers by (i) summing base component costs across covered issuers that reported these costs; and (ii) dividing this sum by the sum of the total number of debit card transactions across covered issuers that reported base component costs. The transaction-weighted average of per-transaction base component costs across covered issuers can be viewed as a broad measure of whether covered issuers collectively are becoming more or less efficient at processing debit card transactions. Specifically, this metric corresponds to the average base component costs of a debit card transaction for covered issuers as a whole. The Board believes that, for skewed distributions like the distribution of per-transaction base component costs, the transaction-weighted average is preferable to alterative metrics, such as the unweighted average across covered issuers, or a given percentile across covered issuers. In particular, the transaction-weighted average is less affected than these alternative metrics by outliers, including covered issuers with low transaction volumes but per-transaction base component costs considerably greater than the vast majority of covered issuers. Further, for skewed distributions like the distribution of per-transaction base component costs, the transaction-weighted average is preferable to the median because, unlike that metric, its value depends on all covered issuers' per-transaction base component costs, rather than only on whether such values fall above or below the median. For example, a reduction in the per-transaction base component costs of the less efficient 50 percent of covered issuers (*e.g.,* due to the adoption of a new transaction-processing technology by these issuers) would cause a decline in the transaction-weighted average but may not affect the median.

[37] A covered issuer is considered to have fully recovered its allowable costs if the covered issuer's allowable costs in a particular year were less than or equal to the aggregate amount of interchange fees permitted under the interchange fee cap for transactions involving that issuer's debit cards in the particular year. In contrast to the increase in the percentage of covered issuers that fully recovered their allowable costs from 2011 to 2021, the percentage of covered issuer transactions for which covered issuers fully recovered their allowable costs was the same in 2021 as it was in 2011 (99.5 percent).

predictably to reflect changes in the allowable costs incurred by covered issuers as those changes occur. Such an approach would avoid long periods during which the interchange fee standards may not be effective for assessing whether, for a debit card transaction subject to the interchange fee standards, the amount of any interchange fee received or charged by a debit card issuer is reasonable and proportional to the cost incurred by the issuer with respect to the transaction. In addition, directly linking the interchange fee standards to the data reported to the Board by covered issuers on the Board's biennial survey would capture changes in allowable costs as quickly as practicable. Further, the Board believes that the patterns observed in the cumulative data collected by the Board since the original rulemaking, described further below, are consistent over time and thus support the establishment at this time of a repeatable process that directly links the interchange fee standards to the data reported on the Debit Card Issuer Survey. Finally, this approach would create predictability for the debit card industry regarding how and when updates to the interchange fee cap would occur.

For these reasons, and as described below, the Board proposes to determine the base component and *ad valorem* component in § 235.3 every other year based on the latest data reported to the Board by covered issuers. The Board believes that, under this approach, the interchange fee standards in § 235.3 will be effective going forward for assessing whether, for a debit card transaction subject to the interchange fee standards, the amount of any interchange fee received or charged by a debit card issuer is reasonable and proportional to the cost incurred by the issuer with respect to the transaction.[38]

The Board also proposes a new methodology for determining the base component. As described above, in 2011, the Board adopted a base component of 21 cents per transaction. The Board selected 21 cents because that value was the site of a clear discontinuity in the distribution of per-transaction base component costs across covered issuers, arranged from lowest- to highest-cost covered issuer, for debit card transactions performed in 2009.[39] The Board has reviewed the distribution of per-transaction base component costs across covered issuers, arranged from lowest- to highest-cost covered issuer, from each biennial survey of covered issuers conducted since Regulation II was adopted. In some survey years, the distribution contained no clear discontinuity; in other survey years, there were multiple apparent discontinuities. In addition, in some cases, the amount corresponding to a particular discontinuity did not reflect the overall trend in the transaction-weighted average of per-transaction base component costs across covered issuers. For these reasons, the Board believes that the original methodology that the Board used to determine the base component by reference to a clear discontinuity in the distribution of per-transaction base component costs across covered issuers, arranged from lowest- to highest-cost covered issuer, is not appropriate for determining the base component at this time and, going forward, would not facilitate the regular and predictable updates to the interchange fee standards that the Board proposes.

Instead, as described below, the Board proposes to determine the base component as a function of the transaction-weighted average of per-transaction base component costs across covered issuers. Under this methodology, any change in the base component costs of the average covered issuer transaction would result in a *proportional* change to the base component. As such, this methodology will ensure that the maximum interchange fee that a covered issuer may receive will be proportional to the base component costs incurred by covered issuers with respect to the average covered issuer transaction, consistent with the Durbin Amendment. Combined with the Board's proposal to determine the base component every other year based on the latest data reported to the Board by covered issuers, this approach is designed to ensure that, to the extent practicable, any interchange fee that a covered issuer receives or charges will remain proportional to the costs incurred by covered issuers with respect to the average debit card transaction over time.[40]

More specifically, the Board proposes to determine the base component as the product of a fixed multiplier and the transaction-weighted average of per-transaction base component costs across covered issuers. Under this formula, the fixed multiplier would be codified in Regulation II and would remain constant. The fixed multiplier would correspond to a target selected by the Board for a *reasonable* percentage of covered issuer transactions for which covered issuers should fully recover their base component costs over time, consistent with the Durbin Amendment.

Consistent patterns that the Board has observed in the data collected from covered issuers since 2009 related to per-transaction base component costs make it possible to derive such a formula. Specifically, while the transaction-weighted average of per-transaction base component costs across covered issuers has declined significantly since the original Regulation II rulemaking, the shape of the distribution of per-transaction costs across covered issuer transactions has not changed markedly between the data collections.[41] Importantly, this particular shape can be well-characterized by a probability

[38] In lieu of directly linking the interchange fee standards to data from the Board's biennial survey of covered issuers going forward, the Board could consider adopting a one-time update to the base component and *ad valorem* component in § 235.3. Following such an approach, the Board would continue to monitor changes in the allowable costs incurred by covered issuers and would propose further updates to the base component and *ad valorem* component in the future, if appropriate. However, such ad hoc updates to the base component and *ad valorem* component would not be predictable, and they could result in periods during which the interchange fee standards may not be effective for assessing whether, for a debit card transaction subject to the interchange fee standards, the amount of any interchange fee received or charged by a debit card issuer is reasonable and proportional to the cost incurred by the issuer with respect to the transaction.

[39] As described above, the Board noted that, had the current base component been in effect in 2009, approximately 80 percent of covered issuers would have fully recovered their base component costs through the base component. However, the Board did *not* indicate that the Board was selecting a cost-recovery target of 80 percent of covered issuers (or any other cost-recovery target across covered issuers or covered issuer transactions) and did not codify in Regulation II an approach for updating the base component to reflect any particular cost-recovery target.

[40] In 2011, the Board rejected a mathematical interpretation of the word ''proportional'' that would have *required* a constant proportion between allowable costs and interchange fees. *See* 76 FR 43393, 43423 (July 20, 2011). The Board continues to believe that the statute requires only that the interchange fees must have a relationship to allowable costs, as the Board stated in 2011. *See id.* Determining the base component as a fixed multiple of the transaction-weighted average of per-transaction base component costs across covered issuers is thus consistent with the statute, and is desirable because it will enable the Board, going forward, to determine the base component based on the latest data reported to the Board by covered issuers.

[41] The Board generates the distribution of per-transaction base component costs across covered issuer transactions as follows. For each covered issuer that reported base component costs, the Board first determines the per-transaction base component costs of the covered issuer by (i) summing the base component costs reported by the covered issuer and (ii) dividing this sum by the total number of debit card transactions reported by the covered issuer. The Board then assigns this result to each of the covered issuer's transactions. Finally, the Board arranges the per-transaction base component costs of all covered issuer transactions in ascending order from lowest- to highest-cost covered issuer transaction.

distribution with a key property: the value of per-transaction base component costs at a target percentile across covered issuer transactions is a multiple of the transaction-weighted average of per-transaction base component costs across covered issuers.[42] The stability of the shape of the distribution over time means that the Board can identify a fixed multiplier that, when multiplied by the transaction-weighted average of per-transaction base component costs in each year, should yield full cost recovery for the target percentage of covered issuer transactions over time.[43]

The stability of the shape of the distribution observed in data collected from covered issuers since 2009 suggests that there are features inherent to the covered issuer segment of the debit card market that persist over time. For this reason, the Board believes that, in future data collections, the distribution of per-transaction base component costs across covered issuer transactions will continue to exhibit a similar shape. Thus, the fixed multiplier derived from the cumulative data collected by the Board since 2009 should continue to yield full cost recovery over time for the target percentage of covered issuer transactions going forward.

Although the proposed fixed multiplier would correspond to a target percentage of covered issuer transactions for which covered issuers should fully recover their base component costs over time, the proposed approach would not guarantee this precise level of cost recovery in any particular year. Rather, in some years, covered issuers may fully recover their base component costs for more than the target percentage of covered issuer transactions; in other years, covered issuers may fully recover their base component costs for less than the target percentage of covered issuer transactions. Over time, however, the Board expects the actual cost recovery of covered issuer transactions to be close to the Board's cost-recovery target.[44] The Board intends to monitor over time the actual cost recovery of covered issuer transactions relative to the Board's cost-recovery target, and in the future may seek comment on potential adjustments to improve the proposed methodology for determining the base component, if appropriate. For example, adjustments to the proposed methodology may be appropriate in the event of fundamental changes to the debit card industry that significantly change the shape of the distribution of per-transaction base component costs across covered issuer transactions relative to the consistent patterns the Board has observed in the cumulative data collected from covered issuers since 2009.

To ensure that, for a debit card transaction subject to the interchange fee standards, the amount of any interchange fee received or charged by a debit card issuer is reasonable, the Board proposes a cost-recovery target of 98.5 percent of covered issuer transactions, which corresponds to a fixed multiplier of 3.7 based on the cumulative data collected from covered issuers since 2009. The Board believes that this cost-recovery target, and the base component that would result from multiplying this fixed multiplier and the transaction-weighted average of per-transaction base component costs, is reasonable because it would allow covered issuers to fully recover their base component costs over time for a significant majority of covered issuer transactions. At the same time, this target acknowledges that full cost recovery for the highest-cost covered issuer transactions would not be reasonable.[45]

A useful measure of the difference between covered issuer transactions above the target percentile (for which the Board believes full cost recovery would be unreasonable) and covered issuer transactions below the target percentile (for which the Board believes full cost recovery would be reasonable) is the efficiency gap with respect to transaction processing between covered issuers whose transactions are above and below the target percentile. This efficiency gap may be represented by the ratio of the transaction-weighted average of per-transaction base component costs for covered issuers whose transactions are above the target percentile to that for covered issuers whose transactions are below the target percentile. The Board computed this ratio for a range of potential cost-recovery targets using each set of data collected from covered issuers since 2009.[46] For the proposed cost-recovery target of 98.5 percent of covered issuer transactions, the average value of this ratio across these data collections is approximately 5.2, meaning that covered issuers whose transactions are above the 98.5 percentile are, on average, more than five times less efficient than covered issuers whose transactions are below the 98.5

[42] In particular, the data on per-transaction base component costs across covered issuer transactions, arranged from lowest- to highest-cost covered issuer transaction, for each year closely approximates the Weibull distribution. The Weibull distribution, commonly used in social sciences and engineering, has the property that the value of the distribution at a particular percentile is a fixed multiple of the average value of the distribution. The Weibull distribution captures a number of key features of the data on covered issuer transactions, including the existence of a small number of high-cost transactions associated with relatively low-volume, high-cost covered issuers.

[43] A particular Weibull distribution is described by two parameters: (i) its scale, which determines the magnitude of the values along the distribution; and (ii) its shape, which determines the degree to which the distribution is skewed to one side. The Board's analysis determined that the consistent patterns in the distribution of per-transaction base component costs across covered issuer transactions for each set of survey data collected since 2009 can be best captured using the Weibull distribution with (i) a scale parameter that is proportional to the transaction-weighted average of per-transaction base component costs across covered issuers for each year, and (ii) a shape parameter that is stable over time. The Board's analysis did not find a statistically significant improvement in the fit of the Weibull distribution to the data when the shape parameter is allowed to differ across years.

[44] The Board assesses how close actual cost recovery is to the cost-recovery target for a particular fixed multiplier by evaluating, for each year, the extent to which actual cost recovery would have diverged from the target had the relevant base component been in effect, and then considering the average deviation over time resulting from these calculations. Specifically, the Board first calculates the difference between the cost-recovery target and the percentage of covered issuer transactions performed in 2009 for which covered issuers would have fully recovered their base component costs if, in 2009, the base component had been the product of (i) the transaction-weighted average of per-transaction base component costs across covered issuers in 2009, and (ii) the fixed multiplier. Second, the Board performs the same calculation for transactions performed in 2011. The Board then takes the simple average of the differences calculated for each year (*i.e.,* for 2009 and 2011). Third, the Board repeats this process for transactions performed in 2013, 2015, 2017, 2019, and 2021, in each case taking the average of the differences calculated for each year so far. These averages represent the extent to which actual cost recovery would have diverged over time from the target had the relevant base components been in effect.

For the fixed multiplier that the Board proposes (*i.e.,* 3.7, as described below), using the measure of closeness described above, the Board found that the actual cost-recovery rate drew nearer to the target cost-recovery rate with each subsequent data collection that was incorporated into the Board's analysis. In other words, the simple average of the differences for 2009–13 transactions improved on that for 2009–11 transactions, which improved on the difference for 2009, and so on. This result suggests that, while for a particular data collection the actual cost-recovery rate may diverge from the target cost-recovery rate, over time actual cost recovery is likely to be close to the cost-recovery target.

[45] In 2011, the Board stated that the term ''reasonable'' implies that, above some amount, an interchange fee is not reasonable, and noted that common definitions of the term ''reasonable'' include ''fair, proper, or moderate'' and ''not excessive.'' *See* 76 FR at 43423. The Board also noted that the Board did not believe that it was consistent with the statutory purpose to permit networks to set interchange fees in order to accommodate 100 percent of the average per-transaction costs of the highest-cost issuers. *See* 76 FR at 43433.

[46] *See* section VII, *infra,* for the average value of this ratio across these data collections for a range of potential cost-recovery targets.

percentile. Accordingly, the Board believes that targeting full cost recovery over time for 98.5 percent of covered issuers transactions is reasonable.

Although the proposed new methodology for determining the base component would ultimately rely on a simple formula (*i.e.,* the transaction-weighted average of per-transaction base component costs across covered issuers multiplied by 3.7), the Board appreciates that the underlying statistical analysis is complex. The Board considered other methodologies for determining the base component. For example, the Board considered setting the base component equal to the transaction-weighted average of per-transaction base component costs across covered issuers (*i.e.,* effectively with a fixed multiplier of 1.0), but determined that this methodology would result in an unreasonably low percentage of covered issuers fully recovering their costs.[47] The Board also considered determining the base component by reference to a target percentile in (i) the distribution of per-transaction base component costs, arranged from lowest- to highest-cost covered issuer, or (ii) the distribution of per-transaction base component costs across covered issuer transactions. In both cases, however, the Board determined that these methodologies could result in a base component that does not reflect changes over time in the transaction-weighted average of per-transaction base component costs across covered issuers due to the sensitivity of these alternative methodologies to low-volume, high-cost covered issuers. Finally, the Board considered adopting a tiered approach that would establish different base components for high-volume, low-cost covered issuers and low-volume, high-cost covered issuers. However, the Board determined that such an approach would create numerous practical challenges for both the Board and debit card industry participants and could disincentivize covered issuers in the tier with the higher base component from growing their debit card programs.[48]

Whereas the Board proposes a new methodology to determine the base component, the Board does not propose to revise the original methodology that the Board used to determine the *ad valorem* component (*i.e.,* the median ratio of issuer fraud losses to transaction value among covered issuers, multiplied by the value of the transaction). Since the Board adopted the interchange fee standards in 2011, the Board has observed an overall increase in fraud losses to all parties related to covered issuer transactions, but the share of such fraud losses absorbed by covered issuers (*i.e.,* issuer fraud losses) has declined during that time. Accordingly, as noted above, the median ratio of issuer fraud losses to transaction value among covered issuers has declined from 2011 to 2021, despite the overall increase in fraud losses to all parties.[49] The Board originally determined the *ad valorem* component using only those fraud losses absorbed by covered issuers, and analysis of the data collected by the Board since the original Regulation II rulemaking shows that, despite these changes in the fraud environment, the median ratio of issuer fraud losses to transaction value among covered issuers remains a representative metric of the cost of fraud incurred by covered issuers. Therefore, for the reasons explained in the preamble accompanying the 2011 final rule, the Board believes that the original methodology continues to be appropriate for determining the *ad valorem* component.[50]

C. Description of Proposal

The Board proposes to determine, for every two-year period, the base component and the *ad valorem* component using the latest data reported to the Board by covered issuers on the Debit Card Issuer Survey. Further, the Board proposes a new methodology for determining the base component. Initially, under the proposed approach, the base component would be 14.4 cents and the *ad valorem* component would be 4.0 basis points (multiplied by the value of the transaction) for debit card transactions performed from the effective date of the final rule to June 30, 2025. The Board does not propose to modify the allowable costs considered for purposes of determining the base component and the *ad valorem* component, or the original methodology used to determine the *ad valorem* component.

Proposed § 235.3(b)(1) would provide that the current base component of 21.0 cents and the current *ad valorem* component of 5.0 basis points (multiplied by the value of the transaction) would continue to apply for debit card transactions performed from October 1, 2011 (the original effective date of § 235.3) until the calendar day prior to the effective date of the final rule. Proposed § 235.3(b)(2) would establish the base component and the *ad valorem* component that would apply for debit card transactions performed from the effective date of the final rule to June 30, 2025. Specifically, for these transactions, the base component would be 14.4 cents, and the *ad valorem* component would be 4.0 basis points (multiplied by the value of the transaction). As described in section III.B, *supra,* the proposed base component of 14.4 cents is the transaction-weighted average of per-transaction allowable costs (excluding fraud losses) across covered issuers based on the data reported on the 2021 Debit Card Issuer Survey (3.9 cents) multiplied by the fixed multiplier of 3.7 and rounded to the nearest tenth of one cent. The proposed *ad valorem* component of 4.0 basis points (multiplied by the value of the transaction) is the median ratio of issuer fraud losses to transaction value among covered issuers based on the data reported on the 2021 Debit Card Issuer Survey, rounded to the nearest quarter of one basis point.[51]

[47] Specifically, setting the base component equal to the transaction-weighted average of per-transaction base component costs across covered issuers would have resulted in only around 15 percent of covered issuers, on average across the biennial data collections, fully recovering their base component costs. Such a methodology would, however, permit covered issuers as a whole to recover their aggregate base component costs.

[48] For example, a tiered base component approach would require the Board to demarcate different tiers of issuers, and the Board's demarcations would likely need to be adjusted over time. In addition, networks would need to track covered issuers by tier to ensure that the interchange fees received by each covered issuer do not exceed the interchange fee standards.

[49] For additional information regarding fraud losses with respect to covered issuer transactions, see section VIII.C, *infra.*

[50] *See* 76 FR at 43431 and 43434. The Board recognizes that some aspects of the fraud environment have changed with, for example, the introduction of increased security for in-person card payments through the issuance of chip-based EMV cards and the growth of ecommerce and remote fraud. As discussed in section VIII.C, *infra,* covered issuers now absorb a smaller percentage of fraud losses from covered issuer transactions than they did in 2009, with both cardholders and merchants absorbing larger proportions of such losses over time. Notwithstanding these changes, the Board believes that its conclusions with respect to the *ad valorem* component remain sound. Furthermore, because the methodology for determining the *ad valorem* component is based on actual fraud losses absorbed by covered issuers, any future decrease or increase in the median ratio of issuer fraud losses to transaction value among covered issuers would, pursuant to the Board's proposed methodology, result in a corresponding future reduction or increase to the *ad valorem* component.

[51] The Board proposes to round the *ad valorem* component to the nearest quarter of one basis point to achieve a similar degree of accuracy as for the base component, which the Board proposes to round to the nearest tenth of one cent. Specifically, for a $50 debit card transaction subject to the interchange fee standards, a change in the *ad valorem* component of one quarter of one basis point would result in a change of around one tenth of one cent to the maximum interchange fee permitted under the interchange fee standards.

The Board proposes a set of conforming revisions to comments 235.3(b)–2 and 235.3(b)–3 of the Official Commentary to make clear that the base component and the *ad valorem* component for a particular transaction depend on the date on which the transaction is performed. Proposed new comment 235.3(b)–4 would provide that, for this purpose, a debit card transaction is considered to be performed on the date on which the transaction is settled on an interbank basis.

Proposed new paragraph (c) to § 235.3 would set forth the basis for determining the amounts in proposed § 235.3(b). Specifically, proposed § 235.3(c) would provide that, for every two-year period, beginning with the period from July 1, 2025, to June 30, 2027, the Board will determine the base component and the *ad valorem* component using the approach described in a new proposed appendix B to Regulation II. Paragraph (a) to proposed appendix B would similarly state that the Board will determine the base component and the *ad valorem* component for each ''applicable period'' (*i.e.,* every two-year period beginning with the period from July 1, 2025, to June 30, 2027) using the approach described in proposed appendix B.

Paragraph (b) of proposed appendix B would set forth the data that the Board would use to determine the base component and *ad valorem* component for each applicable period—namely, the latest data reported to the Board by covered issuers on the Debit Card Issuer Survey. Specifically, paragraph (b) would provide that the Board will determine the base component and the *ad valorem* component for each applicable period using the data reported to the Board by covered issuers pursuant to § 235.8 concerning transactions performed during the calendar year that is two years prior to the year in which that applicable period begins. For example, in the case of the applicable period beginning July 1, 2025, the Board would use the data reported to the Board by covered issuers on the Debit Card Issuer Survey concerning debit card transactions performed in calendar year 2023, which the Board will collect in 2024.

Paragraph (c)(1) of proposed appendix B would establish the formula that the Board would use to determine the base component for each applicable period. Specifically, for each applicable period, the base component would be the product of the transaction-weighted average of per-transaction allowable costs (excluding fraud losses) across covered issuers and 3.7, rounded to the nearest tenth of one cent.[52] Paragraph (c)(2) would define ''allowable costs (excluding fraud losses)''—which is synonymous with the term ''base component costs'' used elsewhere in this preamble—as the sum of the costs of authorization, clearance, and settlement, as reported on the Debit Card Issuer Survey,[53] and transaction-monitoring costs tied to authorization, as reported on the Debit Card Issuer Survey.[54] Paragraph (c)(3) would set forth how the Board calculates the transaction-weighted average of per-transaction allowable costs (excluding fraud losses) across issuers. Specifically, using the latest data reported to the Board by covered issuers, the Board would (i) sum allowable costs (excluding fraud losses) across covered issuers that reported allowable costs (excluding fraud losses); (ii) divide this sum by the sum of the total number of debit card transactions across covered issuers that reported allowable costs (excluding fraud losses); and (iii) round this result to the nearest tenth of one cent.[55]

Paragraph (d)(1) of proposed appendix B would establish the metric that the Board would use to determine the *ad valorem* component for each applicable period. Specifically, for each applicable period, the *ad valorem* component for a particular debit card transaction would be the median ratio of issuer fraud losses to transaction value among covered issuers, rounded to the nearest quarter of one basis point, multiplied by the value of the debit card transaction. Paragraph (d)(2) would define ''ratio of issuer fraud losses to transaction value'' as the value of fraud losses incurred by the covered issuer, as reported on the Debit Card Issuer Survey,[56] divided by the total value of debit card transactions, as reported on the Debit Card Issuer Survey.[57] Paragraph (d)(3) would set forth how the Board calculates the median ratio of issuer fraud losses to transaction value among covered issuers. Specifically, using the latest data reported to the Board by covered issuers, the Board would (i) determine the ratio of issuer fraud losses to transaction value for each covered issuer that reported issuer fraud losses, (ii) sort these ratios in ascending order, and (iii) select the ratio in the middle (if the number of ratios is odd) or calculate the simple average of the two ratios in the middle (if the number of ratios is even).

Paragraph (f) of proposed appendix B would establish the timing of the publication of the base component and *ad valorem* component for an applicable period. Specifically, the Board would publish these amounts in the **Federal Register** no later than March 31 of the calendar year in which the applicable period begins. Because the Board would determine these amounts by applying the approach described in proposed appendix B and using the latest data reported to the Board by covered issuers, the Board would not intend to seek public comment on future updates to these amounts.[58]

IV. Proposed Revisions to Fraud Prevention Adjustment (§ 235.4)

A. Background

As described above, under EFTA section 920(a)(5)(A), the Board may allow for an adjustment to the interchange fee received or charged by an issuer under the interchange fee standards if such adjustment is reasonably necessary to make allowance for costs incurred by the issuer in preventing fraud in relation to debit card transactions involving the issuer, provided that the issuer complies with fraud-related standards established by the Board. The Board's fraud-related standards must (i) be designed to ensure that any fraud-prevention adjustment is limited to the amount that is reasonably necessary to make allowance for costs

[52] Section III.B, *supra,* describes the Board's rationale for proposing 3.7 as the fixed multiplier for determining the base component.

[53] These costs are reported on line 3a of section II of the Debit Card Issuer Survey as ''costs of authorization, clearance, and settlement.'' *See* FR 3064a.

[54] These costs are reported on line 5a.1 of section II of the Debit Card Issuer Survey as ''transactions monitoring costs tied to authorization.'' *See id.*

[55] The total number of debit card transactions attributable to a covered issuer is reported on line 1a of section II of the Debit Card Issuer Survey as the volume of ''settled purchase transactions (excluding pre-authorizations, denials, adjustments, returns, and cash back amounts).'' *See id.*

[56] These costs are reported on line 8b of section II of the Debit Card Issuer Survey as ''losses incurred by issuer'' (*i.e.,* gross value of fraudulent transactions, less fraud-related chargebacks to acquirers net of representments, and less losses absorbed by cardholders). *See id.*

[57] The total value of debit card transactions attributable to a covered issuer is reported on line 1a of section II of the Debit Card Issuer Survey as the value of ''settled purchase transactions (excluding pre-authorizations, denials, adjustments, returns, and cash back amounts).'' *See id.*

[58] *See, e.g.,* 5 U.S.C. 553(b)(3)(B) (exempting agencies from notice and comment rulemaking when the agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest). The Board believes that future determinations of the base component and the *ad valorem* component should qualify for the good cause exemption from notice and comment rulemaking because such determinations would involve the ministerial application of the approach described in proposed appendix B, and the Board would not be exercising any discretion in connection with such determinations. The Board would seek public comment on any future substantive changes to the proposed approach.

incurred by the issuer in preventing fraud in relation to debit card transactions involving the issuer and takes into account any fraud-related reimbursements (including amounts from chargebacks) received from consumers, merchants, or payment card networks in relation to debit card transactions involving the issuer; and (ii) require issuers to take effective steps to reduce the occurrence of, and costs from, fraud in relation to debit card transactions, including through the development and implementation of cost-effective fraud prevention technology.[59] EFTA section 920(a)(5)(B) requires the Board to prescribe regulations to establish standards for making any such fraud-prevention adjustment.[60]

The Board adopted a fraud-prevention adjustment and fraud-prevention standards in § 235.4 of Regulation II.[61] In adopting the fraud-prevention adjustment, the Board (i) defined the fraud-prevention costs that issuers incur and (ii) structured the fraud-prevention adjustment to allow issuers to recover a portion of these costs. A brief overview of how the Board developed the fraud-prevention adjustment in current § 235.4 follows.

1. Fraud-Prevention Costs

EFTA section 920 does not specify types of fraud-prevention costs incurred by issuers that the Board may or may not consider in determining the fraud-prevention adjustment. When the Board adopted current § 235.4, the Board explained that fraud prevention involves a broad range of activities in which an issuer may engage before, during, or after a debit card transaction.[62] Accordingly, and for reasons explained in the preamble accompanying the 2012 final rule, the Board considered costs incurred by debit card issuers associated with a variety of activities that contribute to preventing fraud, including research and development of new fraud-prevention technologies, card reissuance due to fraudulent activity, data security, card activation, and merchant blocking. However, the Board did not consider transaction-monitoring costs to be a fraud-prevention cost for purposes of determining the fraud-prevention adjustment because the Board included transaction-monitoring costs in allowable costs for purposes of the interchange fee standards.[63] The Board also did not consider costs incurred to prevent fraud to a cardholder's transaction account through means other than debit card transactions, or costs incurred to prevent fraud in connection with other payment methods such as credit cards. Additionally, fraud losses, lost revenue attributable to cardholders waiting for replacement cards, fraud-loss insurance, and recovering losses were not included in fraud-prevention costs.[64]

2. Fraud-Prevention Adjustment

When the Board adopted the fraud-prevention adjustment as an interim final rule in 2011, the Board noted that the statute does not specify what amount, or range of amounts, is reasonably necessary to make allowance for an issuer's fraud-prevention costs. The Board concluded that an amount that makes allowance for an issuer's fraud-prevention costs is one that gives consideration to those costs and allows a reasonable recovery of those costs based on the considerations set forth in EFTA section 920(a)(5)(B)(ii).[65]

For the reasons explained in the preamble accompanying the 2012 final rule, the Board adopted a fraud-prevention adjustment of 1 cent per transaction.[66] This amount corresponded to the difference, rounded to the nearest whole cent, between the median per-transaction fraud-prevention costs aggregated with transaction-monitoring costs among covered issuers (1.8 cents) and the median per-transaction transaction-monitoring costs among covered issuers (0.7 cents), based on the data collected on the Board's voluntary survey.[67]

The Board described the foregoing methodology for determining the fraud-prevention adjustment in the preamble accompanying the 2012 final rule. The Board did not, however, codify this methodology in § 235.4. Rather, § 235.4(a) simply provides that, subject to compliance with the Board's fraud-prevention standards, an issuer may receive or charge an amount of no more than 1.0 cent per transaction in addition to any interchange fee it receives or charges in accordance with § 235.3.

B. Rationale for Proposal

When the Board adopted the fraud-prevention adjustment in current § 235.4, the Board stated that it would take into account data from future Debit Card Issuer Surveys when considering any future revisions to the fraud-prevention adjustment.[68] Consistent with EFTA section 920(a)(3)(B), the Board has surveyed covered issuers on a mandatory basis every other year since the reporting requirements in § 235.8 of Regulation II were adopted. Through these biennial surveys, the Board has collected data from covered issuers concerning the costs incurred by covered issuers in connection with debit card transactions performed in calendar years 2011, 2013, 2015, 2017, 2019, and

[59] EFTA section 920(a)(5)(A)(ii). The Board does not propose revisions to the current fraud-prevention standards in § 235.4(b). For the reasons explained in the preamble accompanying the 2012 final rule, the Board adopted a non-prescriptive approach to these standards. *See* 77 FR 46258, 46268–75 (Aug. 3, 2012). The fraud-prevention standards require issuers to develop and implement policies and procedures reasonably designed to take effective steps to reduce the occurrence of, and costs to all parties from, fraudulent debit card transactions, including through the development and implementation of cost-effective fraud-prevention technology. *See* § 235.4(b)(1). Specifically, an issuer's policies and procedures must address: (i) methods to identify and prevent fraudulent debit card transactions; (ii) monitoring of the volume and value of its fraudulent debit card transactions; (iii) appropriate responses to suspicious debit card transactions in a manner designed to limit the costs to all parties from and prevent the occurrence of future fraudulent debit card transactions; (iv) methods to secure debit card and cardholder data; and (v) such other factors as the issuer considers appropriate. *See* § 235.4(b)(2). An issuer must review, at least annually, its fraud-prevention policies and procedures, and their implementation, and update them as necessary in light of: (i) their effectiveness in reducing the occurrence of, and costs to all parties from, fraudulent debit card transactions involving the issuer; (ii) their cost-effectiveness; and (iii) changes in the types of fraud, methods used to commit fraud, and available methods for detecting and preventing fraudulent debit card transactions that the issuer identifies from (A) its own experience or information, (B) information provided to the issuer by its payment card networks, law enforcement agencies, and fraud-monitoring groups in which the issuer participates, and (C) applicable supervisory guidance. *See* § 235.4(b)(3). In order to charge or receive the fraud-prevention adjustment, an issuer must annually notify its payment card networks that it complies with the Board's fraud-prevention standards, and must notify its payment card networks if it is no longer eligible to receive or charge the fraud-prevention adjustment. *See* § 235.4(c) and (d).

[60] In issuing regulations to implement any fraud-prevention adjustment, the Board must consider certain factors set forth in EFTA section 920(a)(5)(B)(ii), which are discussed in section VIII.C, *infra*.

[61] Section 235.4 was initially adopted via an interim final rule in July 2011. *See* 76 FR 43477 (July 20, 2011). The Board subsequently issued a final rule that made various amendments to the interim final rule. *See* 77 FR 46258 (Aug. 3, 2012).

[62] 77 FR 46258, 46264 (Aug. 3, 2012).

[63] *See id.; see also* 76 FR 43393, 43431 (July 20, 2011) (noting that the types of fraud-prevention activities considered in connection with the fraud-prevention adjustment are those activities that prevent fraud with respect to debit card transactions at times other than when the issuer is effecting the transaction); 80 FR 48684, 48685 (Aug. 14, 2015) (same).

[64] 77 FR at 46264.

[65] 76 FR at 43482. The Board rejected an interpretation that would require a direct connection between the fraud-prevention adjustment and actual issuer costs. The Board also did not interpret the statute to require the fraud-prevention adjustment to permit each (or any) issuer to fully recover its fraud-prevention costs. *See id.*

[66] 77 FR at 46265–66.

[67] 77 FR at 46263.

[68] 77 FR at 46266.

2021. These data show that fraud-prevention costs have risen since 2009. Specifically, the median per-transaction fraud-prevention costs among covered issuers was 1.3 cents in 2021.[69]

Given this development, the Board believes it is necessary to revise the fraud-prevention adjustment to reflect the increase since 2009 in fraud-prevention costs. In addition—and for the reasons explained in section III.B, *supra,* in connection with the interchange fee standards—the Board believes that, as much as practicable, the fraud-prevention adjustment should be updated regularly and predictably to reflect changes in the fraud-prevention costs incurred by covered issuers as those changes occur. Accordingly, the Board proposes to determine the fraud-prevention adjustment in § 235.4 every other year based on the latest data reported to the Board by covered issuers. The Board believes that, under this approach, the fraud-prevention adjustment in § 235.4 will continue over time to reflect an amount that is reasonably necessary to make allowance for costs incurred by an issuer in preventing fraud in relation to debit card transactions involving that issuer.

The Board also proposes to modify the original methodology used to determine the fraud-prevention adjustment. When the Board adopted current § 235.4, the Board's objective was to determine the fraud-prevention adjustment as the median per-transaction fraud-prevention costs among covered issuers. However, due to limitations in the data reported to the Board by covered issuers on the Board's voluntary survey, the Board did not directly calculate this metric, but rather approximated it by calculating the difference between (i) the median per-transaction fraud-prevention costs aggregated with transaction-monitoring costs among covered issuers, and (ii) the median per-transaction transaction-monitoring costs among covered issuers, rounded to the nearest cent.[70] However, these limitations no longer persist in the data collected since the reporting requirements in § 235.8 of Regulation II were adopted.[71] As a result, the Board is now able to directly calculate this metric. Therefore, as described below, the Board proposes to determine the fraud-prevention adjustment as the median per-transaction fraud-prevention costs among covered issuers, rounded to the nearest tenth of one cent.

The Board believes that the original methodology, with the proposed modification, continues to be an appropriate methodology for determining the fraud-prevention adjustment, both for the reasons explained in the preamble accompanying the 2012 final rule, and in light of the factors set forth in EFTA section 920(a)(5)(B)(ii), which are discussed in section VIII.C, *infra.*

C. Description of Proposal

The Board proposes to determine, for every two-year period, the fraud-prevention adjustment based on the latest data reported to the Board by covered issuers on the Debit Card Issuer Survey. Further, the Board proposes to modify the original methodology used to determine the fraud-prevention adjustment. The Board does not propose to modify the fraud-prevention costs considered for purposes of determining the fraud-prevention adjustment, or the fraud-prevention standards that covered issuers must meet to receive the fraud-prevention adjustment.

Proposed § 235.4(a)(1) would provide that the fraud-prevention adjustment of 1.0 cents would continue to apply for debit card transactions performed from October 1, 2011 (the original effective date of § 235.4) until the calendar day prior to the effective date of the final rule. Proposed § 235.4(a)(2) would establish the fraud-prevention adjustment (1.3 cents) that would apply for debit card transactions performed from the effective date of the final rule to June 30, 2025. Proposed new comment 235.4(a)-1 would provide that, for purposes of § 235.4(a), a debit card transaction is considered to be performed on the date on which the transaction is settled on an interbank basis.

Proposed new paragraph (b) to § 235.4 would set forth the basis for determining the fraud-prevention adjustment in proposed § 235.4(a). Specifically, proposed § 235.4(b) would provide that, for every two-year period, beginning with the period from July 1, 2025, to June 30, 2027, the Board will determine the fraud-prevention adjustment using the approach described in proposed appendix B to Regulation II. Paragraph (a) to proposed appendix B similarly would state that the Board will determine the fraud-prevention adjustment for each ''applicable period'' (*i.e.,* every two-year period beginning with the period from July 1, 2025, to June 30, 2027) using the approach described in proposed appendix B.

Paragraph (b) of proposed appendix B would set forth the data that the Board would use to determine the fraud-prevention adjustment for each applicable period—namely, the latest data reported to the Board by covered issuers on the Debit Card Issuer Survey. Specifically, paragraph (b) would provide that the Board will determine the fraud-prevention adjustment for each applicable period using the data reported to the Board by covered issuers pursuant to § 235.8 concerning transactions performed during the calendar year that is two years prior to the year in which that applicable period begins. For example, in the case of the applicable period beginning July 1, 2025, the Board would use the data reported to the Board by covered issuers on the Debit Card Issuer Survey concerning debit card transactions performed in calendar year 2023, which the Board will collect in 2024.

Paragraph (e)(1) of proposed appendix B would establish the metric that the Board would use to determine the fraud-prevention adjustment for each applicable period. Specifically, for each applicable period, the fraud-prevention adjustment would be the median per-transaction fraud-prevention costs among covered issuers, rounded to the nearest tenth of one cent. Paragraph (e)(2) would define ''per-transaction fraud-prevention costs'' as fraud-prevention costs, as reported on the Debit Card Issuer Survey,[72] divided by

[69] The Board computes the median per-transaction fraud-prevention among covered issuers by (i) for each covered issuer that reported fraud-prevention costs, dividing the covered issuer's fraud-prevention costs by the total number of debit card transactions reported by the covered issuer; (ii) sorting these values in ascending order; and (iii) selecting the value in the middle (if the number of values is odd) or calculating the simple average of the two values in the middle (if the number of values is even).

[70] Specifically, the Board's voluntary survey asked covered issuers to report (i) their fraud-prevention costs aggregated with transaction-monitoring costs, and also to break out, if possible, (ii) their transaction-monitoring costs. Some covered issuers reported the first figure but not the second. Instead of directly calculating the median per-transaction fraud-prevention costs among covered issuers—which would have required the Board to rely on a smaller data set comprised only of those covered issuers that reported both figures—the Board approximated this metric by calculating the difference between (i) the median per-transaction fraud-prevention costs aggregated with transaction-monitoring costs among covered issuers that reported their fraud prevention costs aggregated with transaction-monitoring costs, and (ii) the median per-transaction transaction-monitoring costs among covered issuers that broke out their transaction-monitoring costs.

[71] Specifically, beginning with the first mandatory Debit Card Issuer Survey, a more representative number of covered issuers have reported their fraud-prevention costs disaggregated from their transaction-monitoring costs.

[72] Fraud-prevention costs are (i) ''total fraud-prevention and data-security costs,'' as reported on line 5a of section II of the Debit Card Issuer Survey, minus (ii) ''transactions monitoring costs tied to authorization,'' as reported on line 5a.1 of section II of the Debit Card Issuer Survey. *See* FR 3064a.

the total number of debit card transactions, as reported on the Debit Card Issuer Survey.[73] Paragraph (e)(3) would set forth how the Board calculates the median per-transaction fraud-prevention costs among covered issuers. Specifically, using the latest data reported to the Board by covered issuers, the Board would (i) determine the per-transaction fraud-prevention costs for each covered issuer that reported fraud-prevention costs, (ii) sort these values in ascending order, and (iii) select the value in the middle (if the number of values is odd) or calculate the simple average of the two values in the middle (if the number of values is even).

Paragraph (f) of proposed appendix B would set forth the timing of the publication of the fraud-prevention adjustment for an applicable period. Specifically, the Board would publish the fraud-prevention adjustment in the **Federal Register** no later than March 31 of the calendar year in which the applicable period begins. Because the Board would determine the fraud-prevention adjustment by applying the methodology described in proposed appendix B and using the latest data reported to the Board by covered issuers, the Board would not intend to seek public comment on future updates to the fraud-prevention adjustment.[74]

V. Other Proposed Revisions

In addition to the proposed revisions to the interchange fee standards in § 235.3 and the fraud-prevention adjustment in § 235.4, the Board proposes a set of technical revisions to Regulation II. In general, these proposed revisions are intended to make Regulation II clearer. Additionally, some of the proposed revisions are intended to ensure the text of the regulation directly incorporates the Board's current construction of the rule.

First, to improve the readability of Regulation II, the Board proposes to add ''covered issuer'' as a defined term in § 235.2. Under the proposal, ''covered issuer'' would mean, for a particular calendar year, an issuer that, together with its affiliates, has assets of $10 billion or more as of the end of the preceding calendar year.[75] Further, the Board proposes certain conforming revisions to the regulation to reflect the addition of ''covered issuer'' as a defined term. For example, the Board proposes to move current comment 235.5(a)–1, which describes which assets do and do not count toward the $10 billion threshold, to the commentary under § 235.2. In addition, the Board proposes to incorporate the defined term ''covered issuer'' where relevant in other sections of Regulation II, particularly in § 235.5(a) (the small issuer exemption) and § 235.8(a) (reporting requirements) and the commentary thereto. The Board does not intend the addition and incorporation of the defined term ''covered issuer'' to be a substantive change.

Second, the Board identified three sentences in the commentary to current § 235.2(k) (definition of ''issuer'') that relate to an issuer's eligibility for the small issuer exemption in § 235.5(a). The Board proposes to move the substance of these sentences into the commentary to § 235.5(a). The Board does not intend this proposed revision to modify the definition of ''issuer'' or alter any issuer's eligibility for the small issuer exemption.

Third, the Board proposes minor revisions to add specificity to § 235.8 (reporting requirements and record retention) and the commentary thereto. Specifically, the Board proposes to specify in § 235.8(a) that each covered issuer must file a report with the Board on a biennial basis, and that each payment card network must file a report with the Board on an annual basis, consistent with the Board's survey practices since 2011. Further, the Board proposes to add new comment 235.8(a)-1 to specify that the reports referred to in proposed § 235.8(a) are the Board's biennial Debit Card Issuer Survey and annual Payment Card Network Survey, and that each survey collects information concerning debit card transactions performed during the previous calendar year. In addition, the Board proposes to add new comment 235.8(a)–2 to specify that newly covered issuers are exempt from the Debit Card Issuer Survey, consistent with the current instructions to that survey.[76] The Board believes that these proposed revisions are helpful in light of the significance of the data collected on the Debit Card Issuer Survey to the proposed approach for determining the base component, the *ad valorem* component, and the fraud-prevention adjustment.

Fourth, the Board proposes to remove § 235.7(c), the commentary to § 235.7(c), and § 235.10 of Regulation II. These sections of the regulation specify the original effective date of Regulation II (October 1, 2011) and give debit card issuers and networks additional time to comply with the requirements in § 235.7(a) for certain types of debit cards, such as general-use prepaid cards and debit cards that use point-of-sale transaction qualification or substantiation systems for verifying the eligibility of purchased goods or services. Both the original effective date of Regulation II and these extended compliance dates have long since passed. As such, the Board believes that these provisions of Regulation II are no longer necessary.[77] In addition, deleting these provisions would avoid the potential for confusion regarding the effective date of any future revisions to the requirements in § 235.7(a).[78]

Fifth, the Board proposes minor revisions to § 235.4 (in addition to those described in section IV.C, *supra*) and the commentary to § 235.3(b) (in addition to those described in section III.C, *supra*) to clarify the relationship between the interchange fee standards in § 235.3 and the fraud-prevention adjustment in § 235.4. Specifically, the Board proposes to modify the first sentence of § 235.4(a) to clarify that the fraud-prevention adjustment is in addition to any interchange fee an issuer receives or charges in accordance with § 235.3. Further, the Board proposes to add a sentence in both comments 235.3(b)–1 and 235.3(b)–3 stating that, in addition to the base component and *ad valorem* component, an issuer may be permitted to receive a fraud-prevention adjustment under § 235.4.

[73] The total number of debit card transactions attributable to a covered issuer is reported on line 1a of section II of the Debit Card Issuer Survey as the volume of ''settled purchase transactions (excluding pre-authorizations, denials, adjustments, returns, and cash back amounts).'' *See id.*

[74] As with future determinations of the base component and the *ad valorem* component, the Board believes that future determinations of the fraud-prevention adjustment should qualify for the good cause exemption from notice and comment rulemaking. *See supra* note 58.

[75] The proposed definition is derived from current § 235.5(a)(1)(ii).

[76] The General Instructions to the Debit Card Issuer Survey currently provide that ''[i]f an issuer that is covered by the interchange fee standards in Regulation II at the time of this data collection was not also covered in [the previous calendar year], it does not need to file a report . . . .'' *See* FR 3064a.

[77] For the same reason, the Board proposes to remove § 235.5(a)(4), which temporarily modified the application of the small issuer exemption due the COVID–19 pandemic. *See* 85 FR 77345 (Dec. 2, 2020). Because the last debit card transactions to which § 235.5(a)(4) applied were performed on December 31, 2021, the Board proposes to remove § 235.5(a)(4) with an effective date of January 1, 2027, which is after the five-year record retention requirement prescribed in § 235.8(c)(1) will have elapsed with respect to these transactions. The effective date of the other proposed revisions described in this preamble is discussed in section VI, *infra*.

[78] The Board does not anticipate any future revisions to § 235.7(a) at this time. However, questions regarding the effective date arose in connection with the Board's recent revisions to § 235.7(a) and the commentary thereto. *See* 87 FR 61217 (Oct. 11, 2022).

Although the Board does not believe that debit card industry participants currently misunderstand the relationship between the interchange fee standards in § 235.3 and the fraud-prevention adjustment in § 235.4, the proposed revisions would eliminate any doubt that the maximum permissible interchange fee amount that a covered issuer may receive for a transaction subject to the interchange fee standards is the sum of the base component, the *ad valorem* component, and, if the covered issuer is eligible, the fraud-prevention adjustment.

Finally, the Board proposes to remove the first clause of § 235.5(a)(1), which cross-references § 235.5(a)(3) (transition period for newly covered issuers) and characterizes the latter paragraph as an exception to the small issuer exemption in § 235.5(a)(1). The Board believes that characterizing § 235.5(a)(3) as an exception to § 235.5(a)(1) is potentially confusing, as § 235.5(a)(3) adds to, rather than subtracts from, the relief provided in § 235.5(a)(1) by providing additional, temporary relief to newly covered issuers that would not otherwise qualify for the relief provided in § 235.5(a)(1). The proposed revision would clarify the relationship between these two paragraphs in § 235.5(a) but is not intended to alter any issuer's eligibility for the small issuer exemption.

VI. Effective Date of Proposed Revisions

With one exception,[79] the Board proposes that the revisions would, if adopted, take effect on the first day of the next calendar quarter that begins at least 60 days after the final rule is published in the **Federal Register**.[80] Such an implementation period would be similar to the implementation period of the current interchange fee standards, which the Board published on July 20, 2011, and became effective on October 1, 2011.[81]

Once the proposed revisions are effective, and as described in sections III.C and IV.C, *supra,* the proposed base component (14.4 cents), *ad valorem* component (4.0 basis points multiplied by the value of the transaction), and fraud-prevention adjustment (1.3 cents) would be in effect through June 30, 2025. On July 1, 2025, a new base component, *ad valorem* component, and fraud-prevention adjustment would take effect. The Board would determine these amounts using the approach described in proposed appendix B based on the data reported to the Board by covered issuers on the Debit Card Issuer Survey in 2024 (concerning debit card transactions performed in calendar year 2023), and would publish these values in the **Federal Register** no later than March 31, 2025.

VII. Request for Comment

The Board invites comment on all aspects of the proposed revisions.[82] In addition, the Board invites feedback on the following specific questions related to the proposal:

1. As stated in paragraph (a) of proposed appendix B to Regulation II, the Board would determine the base component, *ad valorem* component, and fraud-prevention adjustment for every two-year period, beginning with the period from July 1, 2025, to June 30, 2027. Is the proposed two-year cadence appropriate, or should the Board determine these amounts more or less frequently?

2. As described in paragraph (c)(1) of proposed appendix B to Regulation II, the Board would determine the base component as a fixed multiple of the transaction-weighted average of per-transaction base component costs (*i.e.,* allowable costs (excluding fraud losses)) across covered issuers. As described in section III.B, *supra,* the fixed multiplier corresponds to the percentage of covered issuer transactions for which the Board believes covered issuers should fully recover their base component costs over time. Should the Board select an alternative cost-recovery target from among the possibilities below, or another cost-recovery target not included below? If so, why?

3.

Cost-recovery target (percentage of covered issuer transactions) (%)	Fixed multiplier	Base component (based on 2021 data) [83] (cents)	Decline in base component relative to current (based on 2021 data) (%)	Efficiency gap with respect to transaction processing between covered issuers whose transactions are above and below the cost-recovery target (based on 2021 data) [84]	Percentage of covered issuers that would have fully recovered their base component costs in 2021 had the relevant base component been in effect in 2021 (based on 2021 data) (%)
Current	....	21.0	....	....	77
99.5	4.5	17.6	16	7.7	76
99.0	4.0	15.6	26	5.8	71
* 98.5	3.7	14.4	31	5.2	66
98.0	3.5	13.7	35	4.7	63
95.0	2.7	10.5	50	3.8	52

* Proposal.

[79] Unlike the other proposed revisions described in this preamble, the proposed deletion of § 235.5(a)(4) would, if adopted, take effect on January 1, 2027. *See supra* note 77.

[80] Section 302 of the Riegle Community Development and Regulatory Improvement Act, Public Law 103–325, requires that amendments to regulations prescribed by a Federal banking agency that impose additional requirements on insured depository institutions must take effect on the first day of a calendar quarter that begins on or after the date of publication in the **Federal Register**. *See* 12 U.S.C. 4802.

[81] The Board notes that, compared with the original rulemaking in which the Board adopted current § 235.3, the proposed revisions would represent a significantly smaller reduction in the amount of interchange fees that covered issuers may receive for transactions subject to the interchange fee standards. In addition, at the time of the original rulemaking, there was significant uncertainty as to whether payment card networks would implement different interchange fee schedules for transactions subject to and exempt from the interchange fee cap. Since that time, all networks have established different interchange fee schedules for transactions subject to and exempt from the interchange fee cap.

[82] As noted in section III.A, *supra,* the Board has reviewed its construction of the statute and prior analysis regarding the allowable costs that the Board considered in establishing the interchange fee standards, and believes that this prior analysis remains sound. As such, the Board is not inviting comments on the allowable costs considered for purposes of the interchange fee standards.

[83] The transaction-weighted average of per-transaction base component costs across covered issuers, rounded to the nearest tenth of one cent, for transactions performed in 2021 was 3.9 cents. For purposes of comparison, the same average for transactions performed in 2009 and 2011 was 7.7 cents and 5.1 cents, respectively. The base component values listed are the product of 3.9 cents and the relevant fixed multiplier.

[84] As described in section III.B, *supra,* this efficiency gap is represented by the ratio of the transaction-weighted average of per-transaction base component costs for covered issuers whose transactions are above the target percentile to that for covered issuers whose transactions are below the target percentile.

4. As described in paragraph (d)(1) of proposed appendix B to Regulation II, the Board would determine the *ad valorem* component, for a particular debit card transaction, as the median ratio of issuer fraud losses to transaction value among covered issuers, multiplied by the value of the transaction. Should the Board adopt an alternative methodology for determining the *ad valorem* component? If so, why?

5. As described in paragraph (e)(1) of proposed appendix B to Regulation II, the Board would determine the fraud-prevention adjustment as the median per-transaction fraud-prevention costs among covered issuers. Should the Board adopt an alternative methodology for determining the fraud-prevention adjustment? If so, why?

6. As described in paragraphs (c)(1), (d)(1), and (e)(1) of proposed appendix B to Regulation II, respectively, the Board proposes to round the base component to the nearest tenth of one cent, the *ad valorem* component to the nearest quarter of one basis point, and the fraud-prevention adjustment to the nearest tenth of one cent. Further, as described in paragraph (c)(3) of proposed appendix B to Regulation II, in determining the base component, the Board proposes to round the transaction-weighted average of per-transaction allowable costs (excluding fraud losses) across covered issuers to the nearest tenth of one cent. Do these rounding conventions provide an appropriate degree of precision? If not, what alternative rounding conventions should the Board adopt?

7. As described in paragraphs (c) through (e) of proposed appendix B to Regulation II, the Board would determine the base component, *ad valorem* component, and fraud-prevention adjustment for an applicable period using data reported on lines 1a, 3a, 5a, 5a.1, and 8b of the Debit Card Issuer Survey (FR 3064a).

a. Are there any reporting challenges or data quality issues associated with these line items of which the Board should be aware? If so, how could the Board address these challenges or issues?

b. Should the Board amend § 235.8 of Regulation II to specify that a covered issuer is required to retain records supporting the data that the covered issuer reports on the Debit Card Issuer Survey? Would this record retention requirement be duplicative of any existing recordkeeping requirements for covered issuers? If not, what would be the estimated additional annual burden of this requirement, in terms of hours and cost, for covered issuers?

8. As described in section VI, with one exception, the Board proposes that the revisions would take effect on the first day of the next calendar quarter that begins at least 60 days after the final rule is published in the **Federal Register**. Would this proposed effective date provide sufficient notice to covered issuers, payment card networks, and other industry stakeholders to prepare for the initial changes to the base component, *ad valorem* component, and fraud-prevention adjustment?

9. As stated in paragraph (f) of proposed appendix B to Regulation II, going forward, the Board would publish the base component, *ad valorem* component, and fraud-prevention adjustment in the **Federal Register** no later than March 31 for an applicable period beginning July 1. Would this timeline provide sufficient notice to covered issuers, payment card networks, and other industry stakeholders to prepare for changes to these amounts? Should the Board increase or decrease the period between publication of these values and the beginning of the next applicable period?

10. Proposed comments 235.3(b)–4 and 235.4(b)–1 would provide that, for purposes of determining in which two-year period a debit card transaction is considered to be performed, a debit card transaction is considered to be performed on the date on which it is settled on an interbank basis. Is this proposed convention sufficiently clear? For example, should the Board specify which time zone is controlling for purposes of determining the date on which a transaction is settled on an interbank basis? Should the Board adopt an alternative standard, such as considering a transaction to be performed on the date on which the cardholder presents the debit card to the merchant for payment?

11. Would any of the proposed technical revisions described in section V, which are generally intended to make Regulation II clearer, create unintended consequences?

12. Does the Board's economic analysis of the proposal, set forth in section VIII.A, appropriately describe the likely impact of the proposal on various participants in the debit card market? Are there additional impacts of the proposal that the Board has not considered?

VIII. Regulatory Analyses

A. EFTA Section 904(a) Analysis

1. Statutory Requirement

Section 904(a)(2) of the EFTA requires the Board, in prescribing regulations to carry out the purposes of EFTA section 920, to prepare an economic analysis that considers the costs and benefits to financial institutions, consumers, and other users of electronic fund transfers. The analysis must address the extent to which additional paperwork will be required, the effect upon competition in the provision of electronic fund transfer services among large and small financial institutions, and the availability of such services to different classes of consumers, particularly low-income consumers. EFTA section 904(a)(2) also requires, to the extent practicable, the Board to demonstrate that the consumer protections of the proposed regulations outweigh the compliance costs imposed upon consumers and financial institutions. The Board interprets these requirements as applying with respect to both proposed and final rules implementing EFTA section 920.

In analyzing the potential effects of the proposal, the Board considered predictions of economic theory, information regarding debit card industry structure and practices, and issues raised during the original Regulation II rulemaking. The analysis also incorporates the experience of debit card industry participants since the current interchange fee cap was adopted in 2011.

2. Cost/Benefit Analysis

(a) Effects on Merchants [85]

The Board believes that the primary way in which the proposal would impact merchants is by lowering their costs of accepting debit card transactions. The proposal would generally decrease the interchange fee paid by an acquirer (*i.e.,* a merchant's depository institution) on an average transaction performed using a debit card issued by a covered issuer, which would in turn decrease a merchant's costs by decreasing the merchant discount that the merchant pays to its acquirer for a debit card transaction.[86] Although the precise extent to which acquirers would pass on savings from lower debit card interchange fees to merchants may vary, competition between acquirers in the industry should generally result in acquirers passing on savings from lower

[85] The Board interprets ''other users of electronic fund transfer services'' in EFTA section 904(a)(2) to refer primarily to merchants.

[86] Data collected by the Board show that, since adoption of the current interchange fee cap, actual per-transaction interchange fees for transactions subject to the interchange fee standards have been close in value to the amount permitted under the interchange fee cap. Thus, the Board expects that the proposed revisions to the interchange fee cap will directly lower per-transaction interchange fees for most transactions subject to the interchange fee standards.

interchange fees to their merchant customers.[87]

Merchants that experience a decrease in the costs of accepting debit card transactions may pass on some or all these savings to consumers in the form of lower prices, foregone future price increases, or improved products or services.[88] The extent to which merchants would pass on such savings to consumers may depend on many factors. For example, merchants in more competitive markets would be likely to pass on more of their cost savings to consumers compared with merchants facing less competition.

Measuring the extent to which merchants pass on cost savings to consumers, including any decrease in the costs of accepting certain forms of payment, is generally difficult.[89] Efforts to measure the extent to which merchants passed on to consumers any savings associated with the decrease in the costs of accepting debit card transactions in the period following the adoption of the current interchange fee cap in 2011 have yielded a wide range of results. For example, in response to a survey conducted soon after the introduction of the interchange fee cap, merchants did not consistently report making adjustments to their prices in response to the interchange fee cap.[90] By contrast, later research efforts analyzing data from longer time periods found evidence that merchants passed on to consumers a portion of their debit card acceptance costs (*e.g.,* by adjusting their prices) and that the degree of pass-through depended on merchant size.[91]

Finally, the decrease in costs of accepting debit card transactions may incentivize some merchants that until now have not accepted debit cards as a form of payment to begin doing so. In particular, while debit card acceptance is already high for most in-person transactions, the proposal may encourage greater adoption of debit cards in market segments where acceptance may be lower, such as card-not-present (*e.g.,* ecommerce) transactions. Another market segment for which merchants may increase debit card acceptance are small-dollar purchases because, for this market segment, the proposed decrease in the base component would substantially reduce debit card acceptance costs as a proportion of the transaction value. Faced with lower debit card acceptance costs, some merchants may also look to provide incentives to their customers, or otherwise steer them, to pay with debit cards over alternative payment methods.

(b) Effects on Debit Card Issuers [92]

The Board believes that the proposal would have a direct effect on covered issuers but would not directly affect debit card issuers exempt from the interchange fee cap (exempt issuers).

The primary way in which the proposal would affect covered issuers would be by lowering their revenue from debit card transactions. In particular, covered issuers' interchange fee revenue would decline as the proposal would decrease the average interchange fee they collect on debit card transactions subject to the interchange fee standards. This reduction in covered issuers' total debit card interchange fee revenue could be offset to some extent by the likely continued growth in total debit card volume, with the offset potentially varying between different issuers. Debit card popularity has grown substantially since the current interchange fee cap was adopted; over this period, debit cards have become the most commonly used noncash payment method in the United States.[93] As noted above, further reduction in interchange fee levels may support continued growth in debit card volumes to the extent that more merchants accept debit cards as a form of payment or encourage their customers to use debit cards.

Faced with lower interchange revenue from debit card transactions, covered issuers may offset some or all lost interchange fee revenue through a combination of customer fee increases and issuer cost reductions (*e.g.,* improvements to transaction-processing efficiency).[94] Depending on a variety of factors, such adjustments may make covered issuers' checking account and debit card programs less attractive to consumers. In response to these adjustments, consumers may switch to checking account or debit card programs offered by exempt issuers, or to alternative payment methods such as credit cards and digital payment methods, potentially leading to a further reduction in covered issuers' revenues from debit cards.[95]

The experience following the introduction of the current interchange fee cap in 2011 provides information about how covered issuers may adjust their debit card programs in response to the proposal. Research shows that the adoption of the current interchange fee cap resulted in covered issuers increasing customer fees on checking accounts more than they otherwise would have, although these increases offset the reduction in interchange fee revenue only partially.[96] Furthermore,

[87] The extent to which an acquirer passes on savings from lower interchange fees to a merchant may depend on many factors, including the merchant's type and size.

[88] In addition, merchants may use savings from lower costs of accepting debit card transactions to enhance their operations, for example, by adding staff, improving their facilities, or implementing new technology.

[89] Potential challenges include (i) a lack of detailed price and cost data at the merchant level, (ii) contemporaneous changes in other costs for merchants, (iii) the small magnitude of cost variation due to changes in interchange fees relative to total price, and (iv) asymmetric price stickiness in the short term, meaning that merchants are more likely to increase prices in response to cost increases than to lower prices in response to cost decreases. For an overview of research looking to measure merchant cost pass-through, *see* Howard Chang, David S. Evans & Daniel D. Garcia Swartz, *The Effect of Regulatory Intervention in Two-Sided Markets: An Assessment of Interchange-Fee Capping in Australia,* 4 Review of Network Economics 328 (2005), *https://doi.org/10.2202/1446-9022.1080.*

[90] *See* Wang, Zhu, Scarlett Schwartz, & Neil Mitchell, *The Impact of the Durbin Amendment on Merchants: A Survey Study,* 100 Federal Reserve Bank of Richmond Economic Quarterly 183 (2014), *https://www.richmondfed.org/-/media/RichmondFedOrg/publications/research/economic_quarterly/2014/q3/pdf/wang.pdf.*

[91] *See, e.g.,* Vladmir Mukharlyamov & Natasha Sarin, *Price Regulation in Two-Sided Markets: Empirical Evidence from Debit Cards* (last rev. Nov. 28, 2022) (unpublished manuscript), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3328579;* Efraim Berkovich & Zheli He, *Rewarding the Rich: Cross Subsidies from Interchange Fees* (Hispanic Leadership Fund, May 3, 2022), *https://hispanicleadershipfund.org/wp-content/uploads/2022/05/HLF_Report_RewardingTheRich-InterchangeFees_03May22.pdf.*

[92] The Board interprets ''financial institutions'' in EFTA section 904(a)(2) to refer primarily to issuers of debit cards.

[93] Board of Governors of the Federal Reserve System, *The Federal Reserve Payments Study: 2022 Triennial Initial Data Release, https://www.federalreserve.gov/paymentsystems/fr-payments-study.htm.*

[94] An issuer seeking to reduce costs may reduce transaction-processing costs and/or other types of costs. Under the proposed approach, the former could result in a reduction to the interchange fee cap once data collected by the Board show a reduction in the transaction-weighted average of per-transaction transaction-processing costs across covered issuers. Although another way in which covered issuers could offset a loss in interchange fee revenue could be through reductions in debit card reward programs, data collected by the Board show that following the adoption of the current interchange fee cap, covered issuers significantly limited or eliminated such programs, suggesting that issuers may not be able to reduce such programs much further. *See generally* Board of Governors of the Federal Reserve System, *Regulation II (Debit Card Interchange Fees and Routing): Reports and Data Collections, https://www.federalreserve.gov/paymentsystems/regii-data-collections.htm.*

[95] In addition, the reduction in covered issuers' interchange fee revenue could theoretically lead some covered issuers, particularly those serving niche market segments, such as high net-worth individuals, to downsize or potentially discontinue their debit card programs.

[96] Benjamin S. Kay, Mark D. Manuszak & Cindy M. Vojtech, *Competition and Complementarities in*

Continued

the continued growth in debit card popularity since the adoption of Regulation II, and the lack of a pronounced shift by consumers from covered issuers' to exempt issuers' debit card programs, suggest that such fee increases and other adjustments to checking accounts and debit card programs offered by covered issuers did not make them substantially less attractive to consumers.[97] Finally, the Board is not aware of any evidence that the adoption of the current interchange fee cap led any covered issuers to discontinue their debit card programs.

By contrast, the proposal would not directly or, the Board believes, indirectly affect exempt issuers (*i.e.,* those with consolidated assets under $10 billion).[98] The experience following the introduction of the current interchange fee cap in 2011 provides information about whether exempt issuers are likely to be affected by the proposal. First, the adoption of the current interchange fee cap and the statutory exemptions for certain issuers and debit card transactions led all debit card networks to adopt pricing structures with different interchange fees for covered and exempt issuers. Second, data collected by the Board demonstrate that average per-transaction interchange fees for exempt issuers across all payment card networks did not decline after the current interchange fee cap was introduced in 2011 and have not declined since then.[99] Average per-transaction interchange fees for exempt issuers have remained at a level substantially higher than average per-transaction interchange fees for covered issuers, with the latest data collected by the Board documenting that average per-transaction interchange fees for exempt issuers increased in 2020 and 2021.[100]

(c) Effects on Consumers and Availability of Services to Different Classes of Consumers

As discussed above in the context of effects on merchants and debit card issuers, the proposal could affect consumers in two main ways. On the one hand, consumers could benefit if merchants pass on savings associated with the decrease in costs of accepting debit card transactions in the form of lower prices, forgone future price increases, or improvements in product or service quality. On the other hand, consumers could be negatively affected if covered issuers increase fees on debit cards or checking accounts, or make other adjustments that make these products less attractive to consumers.

The net effect on consumers, both individually and in the aggregate, will depend on which of these two effects predominates, which would in turn depend on many factors and is thus difficult to predict. As noted above, merchants in more competitive markets would likely pass on a larger portion of their cost savings to consumers. In a similar way, in response to declines in interchange fee revenue, covered issuers in more competitive markets would be less likely to increase fees or make other changes that negatively affect consumers. Covered issuers that face strong competition from exempt issuers may be less likely to raise fees, as doing so could increase the probability that customers switch to these competing institutions.

In addition, the effect of the proposal could differ between particular classes of consumers in several ways. First, if the proposal results in merchants further increasing debit card acceptance (*e.g.,* for card-not-present transactions), consumers' ability to make such payments could increase, generating benefits to consumers without access to alternative non-cash payment methods, such as credit cards. Second, if the proposal results in covered issuers increasing fees, banking services could become less accessible to lower-income consumers who may be more sensitive to such fees.[101]

(d) Additional Paperwork

The proposal would not substantively alter the reporting and recordkeeping requirements that § 235.8 of Regulation II imposes on covered issuers and networks, and would not alter the recordkeeping requirement for exempt issuers.[102] Regulation II does not impose any reporting or recordkeeping requirements on consumers or merchants.

(e) Effects Upon Competition in the Provision of Electronic Banking Services[103]

The proposal could affect competition between covered and exempt issuers by reducing the average per-transaction debit card interchange fee received by covered issuers without affecting the amount received by exempt issuers. As noted above, the competitive effect of any adjustments made by covered issuers to their fee structures in response to the reduction in interchange fee revenue would depend on the degree of substitution between exempt and covered issuers. Research suggests that competition between smaller and larger depository institutions is weaker than competition between large depository institutions or competition between small depository institutions, likely because these institutions serve different customer bases.[104] In addition,

Retail Banking: Evidence from Debit Card Interchange Regulation, 34 Journal of Financial Intermediation 91 (2018); Mark D. Manuszak & Krzysztof Wozniak, *The Impact of Price Controls in Two-Sided Markets: Evidence from US Debit Card Interchange Fee Regulation,* Finance and Economics Discussion Series 2017–074, *https://www.federal6reserve.gov/econres/feds/files/2017074pap.pdf;* Vladmir Mukharlyamov & Natasha Sarin, *Price Regulation in Two-Sided Markets: Empirical Evidence from Debit Cards* (last rev. Nov. 28, 2022) (unpublished manuscript), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3328579.*

[97] *See generally* Board of Governors of the Federal Reserve System, *Regulation II (Debit Card Interchange Fees and Routing): Reports and Data Collections, https://www.federalreserve.gov/paymentsystems/regii-data-collections.htm.*

[98] The Board collects and reports annual information from payment card networks about their interchange fees for transactions subject to and exempt from the interchange fee cap. *See* Board of Governors of the Federal Reserve System, *Regulation II (Debit Card Interchange Fees and Routing): Average Debit Card Interchange Fee by Payment Card Network, https://www.federalreserve.gov/paymentsystems/regii-average-interchange-fee.htm.* The Board also annually publishes lists of covered and exempt institutions that issuers, payment card networks, and other market participants can use to determine which issuers qualify for the small issuer exemption. *See* Board of Governors of the Federal Reserve System, *Interchange Fee Standards: Small Issuer Exemption, https://www.federalreserve.gov/paymentsystems/regii-interchange-fee-standards.htm.*

[99] *See* Board of Governors of the Federal Reserve System, *Regulation II (Debit Card Interchange Fees and Routing): Average Debit Card Interchange Fee by Payment Card Network, https://www.federalreserve.gov/paymentsystems/regii-average-interchange-fee.htm.*

[100] *See id.*

[101] However, the Board notes that the unbanked rate in the United States has been steadily declining over time, including after the introduction of the current interchange fee cap in 2011. According to the data collected by the Federal Deposit Insurance Corporation, the rate of unbanked in the population fell from 8.2 percent in 2011 to an all-time low of 4.5 percent in 2021. *See* Federal Deposit Insurance Corporation, *2021 FDIC National Survey of Unbanked and Underbanked Households, https://www.fdic.gov/analysis/household-survey/2021report.pdf.*

[102] However, the Board requests comment on whether § 235.8 of Regulation II should be amended to specify that a covered issuer is required to retain records supporting the data that the covered issuer reports on the Debit Card Issuer Survey. *See* section VII, *supra* (Question 6(b)).

[103] Although EFTA section 904(a)(2) requires the Board to consider the effects upon competition in the provision of electronic banking services among large and small financial institutions, the Board is considering the impact of the final rule on competition generally, including competition between large and small financial institutions.

[104] *See, e.g.,* Robert M. Adams, Kenneth P. Brevoort & Elizabeth K. Kiser, *Who Competes with Whom? The Case of Depository Institutions,* 55 Journal of Industrial Economics 141 (2007); Andrew M. Cohen & Michael J. Mazzeo, *Market Structure and Competition Among Retail Depository Institutions,* 89 Review of Economics and Statistics 60 (2007); Timothy H. Hannan & Robin A. Prager, *The Profitability of Small Single-Market Banks in an Era of Multi-Market Banking,* 33 Journal of Banking and Finance 263 (2009).

data collected by the Board indicates that the proportion of debit card transactions attributable to covered and exempt issuers did not significantly change before and after the adoption of the current interchange fee cap.[105] In light of this evidence, the Board does not expect the proposal to have a significant impact on competitive dynamics between the two groups of issuers. The Board further does not believe that the proposal would affect competition between debit card networks.

(f) Consumer Protection and Compliance Costs [106]

Based on the analysis above, the Board cannot, at this time, determine whether the potential benefits of the proposal to consumers exceed the possible costs imposed on consumers and financial institutions. As described above, the proposal may yield benefits for consumers, but the magnitude of these benefits will depend on the behavior of various participants in the debit card industry. The proposal may also impose costs on consumers and financial institutions, but the net effect on any individual or entity will depend on its particular circumstances. Because the overall effects of the proposal on consumers and on financial institutions are dependent on a variety of factors, the Board cannot determine at this time whether the potential benefits of the proposal to consumers exceed the possible costs imposed on consumers and financial institution.

B. Statutory Considerations for Proposed Revisions to the Interchange Fee Standards

In prescribing regulations to establish interchange fee standards, EFTA section 920(a)(4) requires the Board to consider the functional similarity between debit card transactions and checking transactions that are required within the Federal Reserve bank system to clear at par.[107]

The Board considered the functional similarity between debit card transactions and checking transactions when the Board adopted Regulation II, and this analysis informed certain decisions the Board made when the Board established the interchange fee standards.[108] The similarities noted by the Board included the fact that both types of transactions result in a debit to an asset account; both involve electronic processing and deposit; both involve processing fees paid by merchants to banks and other intermediaries; and both have similar settlement timeframes. The differences noted by the Board included the closed nature of debit card systems compared to the open check clearing and collection system (and limitations on routing a debit card transaction based on the set of networks the issuer has enabled or that the merchant accepts); the payment authorization that is an integral part of debit card transactions (but not check transactions), which generally guarantees that the transaction will not be returned for insufficient funds or certain other reasons (*e.g.,* a closed account); processing and collection costs incurred by the issuer (analogous to the payor's bank) for debit card transactions but not for check transactions; par clearance in the check system; payee deposit and availability; the amount of time in which a payor may reverse a transaction (which is much longer in the case of a debit card transaction compared to a check); and the increasing popularity of debit card payments (and declining use of check).

The Board has reviewed its analysis from 2011 regarding the functional similarity between debit card transactions and checking transactions and believes that the factual predicates underlying that analysis remain unchanged. For that reason, the Board continues to believe that its prior analysis remains sound.

C. Statutory Considerations for Proposed Revisions to the Fraud Prevention Adjustment [109]

1. Statutory Requirement

EFTA section 920(a)(5)(B)(ii) requires the Board, in prescribing regulations for any fraud-prevention adjustment, to consider (i) the nature, type, and occurrence of fraud in debit card transactions; (ii) the extent to which the occurrence of fraud depends on whether authorization in a debit card transaction is based on signature, personal identification number (PIN), or other means; (iii) the available and economical means by which fraud on debit card transactions may be reduced; (iv) the fraud-prevention and data-security costs expended by each party involved in debit card transactions (including consumers, persons who accept debit cards as a form of payment, financial institutions, retailers, and payment card networks); (v) the costs of fraudulent transactions absorbed by each party involved in such transactions (including consumers, persons who accept debit cards as a form of payment, financial institutions, retailers, and payment card networks); (vi) the extent to which interchange fees have in the past reduced or increased incentives for parties involved in debit card transactions to reduce fraud on such transactions; and (vii) such other factors as the Board considers appropriate.[110] The Board has considered the factors set forth in EFTA section 920(a)(5)(B)(ii) in light of the latest data from covered issuers from 2021 and the cumulative data collected from covered issuers since the original Regulation II rulemaking.

When the Board adopted the current fraud-prevention adjustment of 1.0 cent, the Board focused on one factor in particular: the fraud-prevention costs expended by various parties involved in debit card transactions.[111] As discussed below, the Board believes that all parties continue to incur fraud-prevention costs and that the Board's proposed methodology for determining the fraud-prevention adjustment appropriately considers those costs.

---

[105] *See generally* Board of Governors of the Federal Reserve System, *Regulation II (Debit Card Interchange Fees and Routing): Reports and Data Collections, https://www.federalreserve.gov/paymentsystems/regii-data-collections.htm.*

[106] To the extent that the interchange fee standards and fraud-prevention adjustment constitute consumer protections, the Board believes that the aim of those protections is broadly to benefit consumers, rather than to address specific consumer rights. As such, the Board has, to the extent practicable, considered broadly whether the overall benefits of the proposed revisions to consumers outweigh other costs imposed on consumers or financial institutions.

[107] The same provision of the statute additionally requires the Board to (i) distinguish between certain types of costs incurred by debit card issuers and (ii) consult with certain other agencies. The allowable costs that the Board considered in establishing the interchange fee standards are discussed in section III.A, *supra.* The interagency consultation requirement is discussed in section VIII.D, *infra.*

[108] *See* 76 FR 43393, 43399 (July 20, 2011). For example, similarities and differences between debit card transactions and check transactions were factors in the Board's decision to include or exclude from allowable costs a number of types of costs incurred by debit card issuers. *See* 76 FR at 43428 (July 20, 2011).

[109] All data used in this section have been sourced from the Board's Debit Card Issuer Surveys and Payment Card Network Surveys. Reports and data tables published by the Board, as well as notes regarding the figures cited in this section, may be found on the Board's website. *See* Board of Governors of the Federal Reserve System, *Regulation II (Debit Card Interchange Fees and Routing): Reports and Data Collections, https://www.federalreserve.gov/paymentsystems/regii-data-collections.htm.*

[110] EFTA section 920(a)(5)(B)(ii) does not specify precisely how the Board should evaluate each of these factors.

[111] *See* 77 FR 46258, 46265 (Aug. 3, 2012). The Board also considered the costs of losses absorbed by different parties to fraudulent transactions when it developed the fraud-prevention standards, which the Board does not propose to revise. *See* 77 FR at 46270. The Board additionally considered certain other factors in connection with the overall structure of the fraud-prevention adjustment, such as the incentives created by the adjustment. *See* 76 FR 43477, 43483 (July 20, 2011).

Notably, as described below, data reported by covered issuers since the adoption of Regulation II show that the incidence, types, and relative rates of absorption of fraud losses have changed. As noted in section III.B, *supra,* in connection with the Board's proposed revisions to the *ad valorem* component, the Board has observed an overall increase in fraud losses to all parties related to covered issuer transactions, but the share of such fraud losses absorbed by covered issuers has declined. Changes in the median ratio of issuer fraud losses to transaction value among covered issuers would be reflected in the Board's proposed revisions to the *ad valorem* component.

2. Factors

(a) Nature, Type, and Occurrence of Fraud

With respect to covered issuer transactions, fraud losses to all parties as a share of transaction value increased from 9.0 basis points in 2009 to 17.5 basis points in 2021, and have displayed an upward trend since 2011 (the first year for which the Debit Card Issuer Survey was mandatory). In 2021, the most commonly reported and highest-value fraud types for covered issuer transactions were card-not-present fraud, lost and stolen card fraud, and counterfeit fraud. Card-not-present fraud, at 8.6 basis points of transaction value, accounted for almost half of overall fraud in 2021. Lost and stolen card fraud accounted for 4.6 basis points of transaction value, and counterfeit card fraud accounted for 3.4 basis points of transaction value. In 2009, counterfeit card fraud, card-not-present fraud, and lost and stolen card fraud accounted for 4.3 basis points, 1.8 basis points, and 1.5 basis points, respectively, as a share of transaction value.

(b) Extent to Which the Occurrence of Fraud Depends on Authentication Mechanism

Overall fraud incidence for covered issuer transactions approximately doubled from 2009 to 2021, and dual-message (traditionally mainly signature-authenticated) debit card transactions exhibited a considerably higher fraud incidence than single-message (traditionally mainly PIN-authenticated) debit card transactions, as has been the case since 2009. In 2021, 0.11 percent of covered issuer transactions were reported as fraudulent. Covered issuers reported as fraudulent 0.13 percent of dual-message transactions and 0.02 percent of single-message transactions. Across all covered issuer transactions, the average loss for dual-message transactions was 8.6 cents per transaction and represented 17.5 basis points of transaction value. For single-message transactions, the average loss was 1.9 cents per transaction and represented 4.2 basis points of transaction value. In 2009, 0.04 percent of covered issuer transactions were reported as fraudulent. The average loss for dual-message transactions was 4.7 cents per transaction and represented 12.7 basis points of transaction value. The average loss for single-message transactions was 1.3 cent per transaction and represented approximately 3.2 basis points of transaction value.

The differential in fraud losses between single- and dual-message transactions can be explained in part by differences in the use of single- and dual-message networks for card-not-present transactions. As noted above, card-not-present fraud accounted for almost half of overall fraud on covered issuer transactions in 2021, and single message networks continue to be used relatively rarely for card-not-present transactions. In 2021, the percentage of card-not-present transactions out of the total number and value of all debit card transactions processed over single-message networks, at 6.1 and 6.7 percent, respectively, continued to be significantly lower than the analogous percentages for dual-message networks, at 44.2 and 60.7 percent, respectively.

(c) Available and Economical Means by Which Fraud May Be Reduced

In response to the Board's voluntary survey of covered issuers concerning transactions performed in 2009, covered issuers identified several categories of activities used to detect, prevent, and mitigate fraudulent debit card transactions, including transaction monitoring; merchant blocking; card activation and authentication systems; PIN customization; system and application security measures, such as firewalls and virus protection software; and ongoing research and development focused on making fraud-prevention activities more effective.[112] Since that time, the Board identified tokenization as an important emerging fraud-prevention technique, and added it to the list of fraud-prevention activities starting from the 2019 Debit Card Issuer Survey.[113]

(d) Fraud-Prevention Costs Expended by Parties Involved in Debit Card Transactions

When the Board adopted current § 235.4 in 2012, the Board reviewed fraud-prevention costs expended by parties involved in debit card transactions.[114] The Board continues to believe that all parties involved in debit card transactions incur fraud-prevention costs. For example, some consumers routinely monitor their accounts for unauthorized debit card purchases, but the opportunity cost of consumers' time to monitor their account is difficult to put into monetary terms. Merchants and acquirers incur costs for fraud-prevention tools, such as terminals that enable merchants to use various card- and cardholder-authentication mechanisms, address verification, geolocation services, and data-encryption technologies. Merchants may purchase services from third parties and may also develop their own fraud-prevention tools. In addition, merchants may also take steps and incur costs to secure data and comply with Payment Card Industry Data Security Standards (PCI–DSS) and other fraud-prevention standards.

As discussed in section IV of this preamble, *supra,* the Board has collected data from covered issuers concerning the costs incurred by covered issuers in connection with debit card transactions performed in calendar years 2011, 2013, 2015, 2017, 2019, and 2021. These data show that fraud-prevention costs incurred by covered issuers have risen since 2009, such that the median per-transaction fraud-prevention costs among covered issuers was 1.3 cents in 2021.

(e) Costs of Fraudulent Transactions Absorbed by Different Parties Involved in Fraudulent Transactions

Most fraud losses associated with covered issuer transactions in 2021 were borne by covered issuers and merchants. In 2009, covered issuers, merchants, and cardholders bore 61.2 percent, 38.3 percent, and 0.5 percent of these fraud losses, respectively. In 2021, covered issuers, merchants, and cardholders bore 33.5 percent, 47.0 percent, and 19.5 percent of fraud losses, respectively. This shift reflects a number of factors. First, card-not-present transactions grew from 9.8 percent of covered issuer transactions in 2009 to 32.1 percent of covered issuer transactions in 2021. Second, card-not-present fraud accounted for almost half of overall fraud in 2021, and merchants bear a greater share of fraud losses for this type of transactions (almost two-thirds of card-not-present fraud in 2021). Third, merchants absorbed an increasing share of fraud losses across almost all transaction categories and fraud types in

[112] *See* 77 FR 46258, 46261 (Aug. 3, 2012).

[113] *See* 84 FR 65815 (Nov. 29, 2019).

[114] *See* 77 FR at 46261–62.

2021, relative to 2009. For example, merchants' share of fraud losses has also increased over time for single-message transactions, from around 4 percent in 2009 to 31.9 percent in 2021.

(f) Extent to Which Interchange Transaction Fees Have in the Past Affected Fraud-Prevention Incentives

In 2012, the Board noted that issuers have a strong incentive to protect cardholders and reduce fraud independently of interchange fees, and that competition among issuers for cardholders suggested that protecting cardholders from fraud is good business practice for issuers. At the time, merchants commented that, historically, higher interchange fee revenue for signature debit relative to PIN debit may have encouraged issuers to promote the use of signature debit over PIN debit, even though signature debit had substantially higher rates of fraud.[115]

The Board continues to believe that covered issuers have an incentive to protect cardholders and reduce fraud, despite a reduction in the proportion of fraud losses borne by covered issuers and an increase in the proportion born by cardholders. Covered issuers continue to bear more than a quarter of all fraud losses, which means that their efforts to reduce fraud rates translate directly into lower fraud losses. Moreover, competition with other debit card issuers continues to provide downward pressure on the proportion of fraud losses that an issuer passes on to its cardholders, as passing on more fraud losses to cardholders increases the likelihood that they switch to competing issuers. Notwithstanding the adoption of the interchange fee standards and the fraud-prevention adjustment, the median per-transaction fraud-prevention costs among covered issuers has risen since 2009, to 1.3 cents per transaction in 2021.

Furthermore, data collected by the Board show that interchange fees on most transactions subject to the interchange fee cap are at or close to the cap, including for different authentication methods, which suggests that covered issuers have no incentives to promote the use of networks or authentication mechanisms that have higher rates of fraud.

D. Interagency Consultation

In addition to the economic analysis provided above, EFTA section 904(a)(2) requires the Board to consult with the other agencies that have enforcement authority under the EFTA on any rulemakings related to EFTA section 920.[116] Separately, EFTA section 920(a)(4)(C) requires the Board to consult with certain other agencies in prescribing regulations under EFTA section 920(a)(3)(A).[117] The Board consulted with each of the relevant agencies prior to issuing this proposal.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires an agency to consider the impact of its rules on small entities. In connection with a proposed rule, the RFA generally requires an agency to prepare an Initial Regulatory Flexibility Analysis (IRFA) describing the impact of the rule on small entities, unless the head of the agency certifies that the proposal will not have a significant economic impact on a substantial number of small entities and publishes such certification along with a statement providing the factual basis for such certification in the **Federal Register**. An IRFA must contain (i) a description of the reasons why action by the agency is being considered; (ii) a succinct statement of the objectives of, and legal basis for, the proposal; (iii) a description of, and, where feasible, an estimate of the number of small entities to which the proposal will apply; (iv) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposal, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (v) an identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap with, or conflict with the proposal; and (vi) a description of any significant alternatives to the proposal that accomplish its stated objectives.

The Board is providing an IRFA with respect to the proposal. The Board invites comment on all aspects of this IRFA.

1. Reasons Action Is Being Considered

The Board proposes revisions to the interchange fee standards in § 235.3 and the fraud-prevention adjustment in § 235.4 of Regulation II.[118] Under the proposal, the Board would determine, for every two-year period, the base component, *ad valorem* component, and fraud-prevention adjustment based on the latest data reported to the Board by covered issuers on the Debit Card Survey using the methodology described in proposed appendix B. Initially, the base component and the *ad valorem* component would decrease to 14.4 cents and 4.0 basis points (multiplied by the value of the transaction), respectively, while the fraud-prevention adjustment would increase to 1.3 cents, for debit card transactions performed from the effective date of the final rule to June 30, 2025.

As described in section III.B, *supra,* one key rationale for the proposal is the significant decline in the average cost of a debit card transaction, as measured by the transaction-weighted average of per-transaction base component costs across covered issuers, since the Board first adopted § 235.3. In addition, in lieu of an ad hoc approach to updating the interchange fee cap components, the Board believes that, as much as practicable, these components should be updated regularly and predictably to reflect changes in the allowable costs and fraud-prevention costs incurred by covered issuers as those changes occur.

2. Objectives of and Legal Basis for the Proposal

Consistent with EFTA section 920(a)(3), the proposed revisions to § 235.3 are intended to ensure that the interchange fee standards will be effective going forward for assessing whether, for a debit card transaction subject to the interchange fee standards, the amount of any interchange fee received or charged by a debit card issuer is reasonable and proportional to the cost incurred by the issuer with respect to the transaction. Consistent with EFTA section 920(a)(5), the proposed revisions to § 235.4 are intended to ensure that eligible covered issuers receive an adjustment to any interchange fee permitted under § 235.3 in an amount that is reasonably necessary to make allowance for the costs incurred by the covered issuer in preventing fraud in relation to debit card transactions involving that issuer.

3. Description and Estimate of the Number of Small Entities

The proposed revisions to § 235.3 and § 235.4 apply to debit card issuers subject to the interchange fee standards

[115] 77 FR at 46262.

[116] These agencies include the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Department of Transportation, the Securities and Exchange Commission, the Consumer Financial Protection Bureau (CFPB), and the Federal Trade Commission. *See* EFTA section 918.

[117] These agencies include the OCC, FDIC, Office of Thrift Supervision, NCUA, Small Business Administration (SBA), and CFPB.

[118] As described in section V, *supra,* the Board additionally proposes a set of technical revisions to Regulation II. Because these proposed revisions are not intended to be substantive changes, the Board's IRFA does not address these aspects of the proposal.

(*i.e.,* covered issuers). Pursuant to EFTA section 920(a)(6) and § 235.5(a), a debit card issuer that, together with its affiliates, has assets of less than $10 billion as of the end of the calendar year preceding the date of the debit card transaction is exempt from the interchange fee standards, provided that such issuer holds the account that is debited.

The Board generally uses the industry-specific size standards adopted by the SBA for purposes of estimating the number of small entities to which a proposal would apply.[119] The SBA has adopted size standards that provide that card-issuing institutions with average assets of less than $850 million over the preceding year (based on the institution's four quarterly financial statements) are considered small entities.[120] Because all such issuers would qualify for the exemption from the interchange fee standards in § 235.5(a) provided that they hold the account that is debited, the proposed revisions would not apply to any small entities.

4. Description of Compliance Requirements

The proposal would not substantively alter the reporting or recordkeeping requirements that apply to debit card issuers and payment card networks in § 235.8 of Regulation II.[121] Rather, the proposed revisions would adjust the amount of any interchange fee that a covered issuer may receive or charge with respect to a debit card transaction subject to the interchange fee standards. Because interchange fees are collected by networks from acquirers and paid to issuers, a covered issuer should not need to make any changes to its systems to ensure that the amount of any interchange fee does not exceed the amount permitted under Regulation II.

[119] *See* 13 CFR 121.210. Consistent with the SBA's General Principles of Affiliation, the Board generally includes the assets of all domestic and foreign affiliates toward the applicable size threshold when determining whether to classify a particular entity as a small entity. *See* 13 CFR 121.103.

[120] *See* 13 CFR 121.201 (sector 522210). Although this size standard applies to credit card-issuing institutions, the Board believes that the same size standard should apply to debit card-issuing institutions.

[121] However, the Board requests comment on whether § 235.8 of Regulation II should be amended to specify that a covered issuer is required to retain records supporting the data that the covered issuer reports on the Debit Card Issuer Survey. *See* section VII, *supra* (Question 6(b)).

5. Duplicative, Overlapping, and Conflicting Rules

The Board is not aware of any federal rules that may duplicate, overlap with, or conflict with the proposal.

6. Significant Alternatives Considered

As described in section III.B, *supra,* the Board considered several alternative methodologies for determining the base component. In addition, the Board considered a variety of different cost-recovery targets from which the fixed multiplier for determining the base component under the proposed formula is derived. However, due to the statutory exemption from the interchange fee standards for debit card issuers with consolidated assets under $10 billion that hold the account that is debited, the Board does not believe that any of the alternatives considered by the Board would have affected the economic impact of the proposal on small entities.

F. Paperwork Reduction Act

Regulation II contains ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board reviewed the proposal under the authority delegated to the Board by OMB.

Sections 235.8(a) and (b) of Regulation II (12 CFR 235.8(a) and (b)) currently require the reporting of information to the Board, and this reporting requirement is conducted in the form of two surveys collected by the Board: the Debit Card Issuer Survey (FR 3064a; OMB No. 7100–0344) and Payment Card Network Survey (FR 3064b; OMB No. 7100–0344). The proposal would amend section 235.8(a) of Regulation II to reflect the reporting frequency of the FR 3064a and FR 3064b surveys. No revisions to these surveys are being proposed at this time, but the Board is proposing to extend the FR 3064a and FR 3064b for three years.

However, the Board requests comment on whether § 235.8 of Regulation II should be amended to specify that a covered issuer is required to retain records supporting the data that the covered issuer reports on the Debit Card Issuer Survey. *See* section VII.6, *supra* (Question 6(b)). The Board may revise § 235.8 of Regulation II based on comments received in response to this question.

Comments are invited on the following:

(a) Whether the collections of information are necessary for the proper performance of the Board's functions, including whether the information has practical utility;

(b) The accuracy of the Board's estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments on aspects of this document that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section. A copy of the comments may also be submitted to the OMB desk officer for the Agencies: By mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503 or by facsimile to (202) 395–5806, Attention, Federal Banking Agency Desk Officer.

Proposed Extension, Without Revision, of the Following Information Collection

(1) *Collection title:* Interchange Transaction Fees Survey.

Collection identifier: FR 3064.

OMB control number: 7100–0344.

General description of report: This information collection comprises the following reports:

Debit Card Issuer Survey (FR 3064a) collects data from issuers of debit cards (including general-use prepaid cards) that, together with their affiliates, have assets of $10 billion or more, including information regarding the volume and value of debit card transactions; chargebacks and returns; costs of authorization, clearance, and settlement of debit card transactions; other costs incurred in connection with particular debit card transactions; fraud prevention costs and fraud losses; and interchange fee revenue.

Payment Card Network Survey (FR 3064b) collects data from payment card networks, including the volume and value of debit card transactions; interchange fees; network fees; and payments and incentives paid by networks to acquirers, merchants, and issuers.

The data from the FR 3064a and FR 3064b are used to fulfill a statutory requirement that the Board disclose certain information regarding debit card transactions on a biennial basis. In addition, the Board uses data from the Payment Card Network Survey (FR 3064b) to publicly report on an annual basis the extent to which networks have established separate interchange fees for exempt and covered issuers.

Frequency: Annual and biennial.

Affected public: Businesses or other for-profit.

Respondents: Debit card issuers and payment card networks.

Estimated number of respondents:

FR 3064a—534.

FR 3064b—15.

Estimated average hours per response:

FR 3064a—160.

FR 3064b—75.

Estimated annual burden hours:

FR 3064a—85,440.

FR 3064b—1,125.

G. Solicitation of Comments on the Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the proposal in a simple and straightforward manner and invites comment on the use of plain language and whether any part of the proposal could be more clearly stated.

H. Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023 (5 U.S.C. 553(b)(4)) requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of the proposed rule, in plain language, that shall be posted on the internet website under section 206(d) of the E-Government Act of 2002 (44 U.S.C. 3501 note).

In summary, the Board requests comment on a proposal to update the debit card interchange fee cap, which the Board established in 2011, based on the latest data reported to the Board concerning the costs incurred by large debit card issuers. The Board also requests comment on a proposal to establish an approach for updating the interchange fee cap every other year going forward.

The proposal and such a summary can be found at *https://www.regulations.gov* and *https://www.federalreserve.gov/supervisionreg/reglisting.htm.*

List of Subjects in 12 CFR Part 235

Banks, banking, Debit card routing, Electronic debit transactions, Interchange transaction fees.

Authority and Issuance

For the reasons set forth in the preamble, the Board is proposing to revise Regulation II, 12 CFR part 235, as follows:

PART 235—DEBIT CARD INTERCHANGE FEES AND ROUTING (REGULATION II)

Sec.

Authority: 15 U.S.C. 1693*o*–2.

§ 235.1 Authority and purpose.

(a) *Authority.* This part is issued by the Board of Governors of the Federal Reserve System (Board) under section 920 of the Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693o–2, as added by section 1075 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010)).

(b) *Purpose.* This part implements the provisions of section 920 of the EFTA, including standards for reasonable and proportional interchange transaction fees for electronic debit transactions, standards for receiving a fraud-prevention adjustment to interchange transaction fees, exemptions from the interchange transaction fee limitations, prohibitions on evasion and circumvention, prohibitions on payment card network exclusivity arrangements and routing restrictions for debit card transactions, and reporting requirements for debit card issuers and payment card networks.

§ 235.2 Definitions.

For purposes of this part:

(a) *Account:*

(1) Means transaction, savings, or other asset account (other than an occasional or incidental credit balance in a credit plan) established for any purpose and that is located in the United States; and

(2) Does not include an account held under a bona fide trust agreement that is excluded by section 903(2) of the Electronic Fund Transfer Act and rules prescribed thereunder.

(b) *Acquirer* means a person that contracts directly or indirectly with a merchant to provide settlement for the merchant's electronic debit transactions over a payment card network. An acquirer does not include a person that acts only as a processor for the services it provides to the merchant.

(c) *Affiliate* means any company that controls, is controlled by, or is under common control with another company.

(d) *Cardholder* means the person to whom a debit card is issued.

(e) *Control* of a company means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the Board determines.

(f) *Covered issuer* means, for a particular calendar year, an issuer that, together with its affiliates, has assets of $10 billion or more as of the end of the preceding calendar year.

(g) *Debit card:*

(1) Means any card, or other payment code or device, issued or approved for use through a payment card network to debit an account, regardless of whether authorization is based on signature, personal identification number (PIN), or other means, and regardless of whether the issuer holds the account, and

(2) Includes any general-use prepaid card; and

(3) Does not include:

(i) Any card, or other payment code or device, that is redeemable upon presentation at only a single merchant or an affiliated group of merchants for goods or services; or

(ii) A check, draft, or similar paper instrument, or an electronic representation thereof.

(h) *Designated automated teller machine (ATM) network* means either:

(1) All ATMs identified in the name of the issuer; or

(2) Any network of ATMs identified by the issuer that provides reasonable and convenient access to the issuer's customers.

(i) *Electronic debit transaction:*

(1) Means the use of a debit card by a person as a form of payment in the United States to initiate a debit to an account, and

(2) Does not include transactions initiated at an ATM, including cash withdrawals and balance transfers initiated at an ATM.

(j) *General-use prepaid card* means a card, or other payment code or device, that is—

(1) Issued on a prepaid basis in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and

(2) Redeemable upon presentation at multiple, unaffiliated merchants for goods or services.

(k) *Interchange transaction fee* means any fee established, charged, or received by a payment card network and paid by a merchant or an acquirer for the purpose of compensating an issuer for its involvement in an electronic debit transaction.

(l) *Issuer* means any person that authorizes the use of a debit card to perform an electronic debit transaction.

(m) *Merchant* means any person that accepts debit cards as payment.

(n) *Payment card network* means an entity that:

(1) Directly or indirectly provides the proprietary services, infrastructure, and software that route information and data to an issuer from an acquirer to conduct the authorization, clearance, and settlement of electronic debit transactions; and

(2) A merchant uses in order to accept as a form of payment a brand of debit card or other device that may be used to carry out electronic debit transactions.

(o) *Person* means a natural person or an organization, including a corporation, government agency, estate, trust, partnership, proprietorship, cooperative, or association.

(p) *Processor* means a person that processes or routes electronic debit transactions for issuers, acquirers, or merchants.

(q) *Route* means to direct and send information and data to an unaffiliated entity or to an affiliated entity acting on behalf of an unaffiliated entity.

(r) *United States* means the States, territories, and possessions of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

§ 235.3 Reasonable and proportional interchange transaction fees.

(a) *In general.* The amount of any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction shall be reasonable and proportional to the cost incurred by the issuer with respect to the electronic debit transaction.

(b) *Reasonable and proportional fees.* An issuer complies with the requirements of paragraph (a) of this section only if each interchange transaction fee received or charged by the issuer for an electronic debit transaction is no more than the sum of—

(1) For an electronic debit transaction performed from October 1, 2011, to [one calendar day prior to effective date of final rule], a base component of 21.0 cents, and an *ad valorem* component of 5.0 basis points multiplied by the value of the transaction; and

(2) For an electronic debit transaction performed from [effective date of final rule], to June 30, 2025, a base component of 14.4 cents, and an *ad valorem* component of 4.0 basis points multiplied by the value of the transaction.

(c) *Determination of base component and ad valorem component.* For every two-year period, beginning with the period from July 1, 2025, to June 30, 2027, the Board will determine the base component and the *ad valorem* component using the approach described in appendix B to this part.

§ 235.4 Fraud-prevention adjustment.

(a) *In general.* In addition to any interchange transaction fee an issuer receives or charges in accordance with § 235.3, and subject to paragraph (c) of this section, an issuer may receive or charge an amount of no more than—

(1) For an electronic debit transaction performed from October 1, 2011, to [one calendar day prior to effective date of final rule], a fraud-prevention adjustment of 1.0 cent; and

(2) For an electronic debit transaction performed from [effective date of final rule], to June 30, 2025, a fraud-prevention adjustment of 1.3 cents.

(b) *Determination of fraud-prevention adjustment.* For every two-year period, beginning with the period from July 1, 2025, to June 30, 2027, the Board will determine the fraud-prevention adjustment using the approach described in appendix B to this part.

(c) *Issuer standards.* (1) To be eligible to receive or charge the fraud-prevention adjustment in paragraph (a) of this section, an issuer must develop and implement policies and procedures reasonably designed to take effective steps to reduce the occurrence of, and costs to all parties from, fraudulent electronic debit transactions, including through the development and implementation of cost-effective fraud-prevention technology.

(2) An issuer's policies and procedures must address—

(i) Methods to identify and prevent fraudulent electronic debit transactions;

(ii) Monitoring of the volume and value of its fraudulent electronic debit transactions;

(iii) Appropriate responses to suspicious electronic debit transactions in a manner designed to limit the costs to all parties from and prevent the occurrence of future fraudulent electronic debit transactions;

(iv) Methods to secure debit card and cardholder data; and

(v) Such other factors as the issuer considers appropriate.

(3) An issuer must review, at least annually, its fraud-prevention policies and procedures, and their implementation and update them as necessary in light of—

(i) Their effectiveness in reducing the occurrence of, and cost to all parties from, fraudulent electronic debit transactions involving the issuer;

(ii) Their cost-effectiveness; and

(iii) Changes in the types of fraud, methods used to commit fraud, and available methods for detecting and preventing fraudulent electronic debit transactions that the issuer identifies from—

(A) Its own experience or information;

(B) Information provided to the issuer by its payment card networks, law enforcement agencies, and fraud-monitoring groups in which the issuer participates; and

(C) Applicable supervisory guidance.

(d) *Notification.* To be eligible to receive or charge a fraud-prevention adjustment, an issuer must annually notify its payment card networks that it complies with the standards in paragraph (c) of this section.

(e) *Change in status.* An issuer is not eligible to receive or charge a fraud-prevention adjustment if the issuer is substantially non-compliant with the standards set forth in paragraph (c) of this section, as determined by the issuer or the appropriate agency under § 235.9. Such an issuer must notify its payment card networks that it is no longer eligible to receive or charge a fraud-prevention adjustment no later than 10 days after determining or receiving notification from the appropriate agency under § 235.9 that the issuer is substantially non-compliant with the standards set forth in paragraph (c) of this section. The issuer must stop receiving and charging the fraud-prevention adjustment no later than 30 days after notifying its payment card networks.

§ 235.5 Exemptions.

(a) *Exemption for small issuers*—(1) *In general.* Sections 235.3, 235.4, and 235.6 do not apply to an interchange transaction fee received or charged by an issuer that—

(i) Holds the account that is debited; and

(ii) Is not a covered issuer when the electronic debit transaction is performed.

(2) *Determination of issuer asset size.* A person may rely on lists published by the Board to determine whether an issuer is a covered issuer for a particular calendar year.

(3) *Change in status.* If an issuer qualifies for the exemption in paragraph (a)(1) of this section in a particular calendar year, but, as of the end of that calendar year the issuer, together with its affiliates, has assets of $10 billion or more, the issuer must begin complying with §§ 235.3, 235.4, and 235.6 no later than July 1 of the succeeding calendar year.

(b) *Exemption for government-administered programs.* Except as provided in paragraph (d) of this section, §§ 235.3, 235.4, and 235.6 do not apply to an interchange transaction fee received or charged by an issuer with respect to an electronic debit transaction if—

(1) The electronic debit transaction is made using a debit card that has been provided to a person pursuant to a Federal, State, or local government-administered payment program; and

(2) The cardholder may use the debit card only to transfer or debit funds, monetary value, or other assets that have been provided pursuant to such program.

(c) *Exemption for certain reloadable prepaid cards*—(1) *In general.* Except as provided in paragraph (d) of this section, §§ 235.3, 235.4, and 235.6 do not apply to an interchange transaction fee received or charged by an issuer with respect to an electronic debit transaction using a general-use prepaid card that is—

(i) Not issued or approved for use to access or debit any account held by or for the benefit of the cardholder (other than a subaccount or other method of recording or tracking funds purchased or loaded on the card on a prepaid basis);

(ii) Reloadable and not marketed or labeled as a gift card or gift certificate; and

(iii) The only means of access to the underlying funds, except when all remaining funds are provided to the cardholder in a single transaction.

(2) *Temporary cards.* For purposes of this paragraph (c), the term ''reloadable'' includes a temporary non-reloadable card issued solely in connection with a reloadable general-use prepaid card.

(d) *Exception.* The exemptions in paragraphs (b) and (c) of this section do not apply to any interchange transaction fee received or charged by an issuer on or after July 21, 2012, with respect to an electronic debit transaction if any of the following fees may be charged to a cardholder with respect to the card:

(1) A fee or charge for an overdraft, including a shortage of funds or a transaction processed for an amount exceeding the account balance, unless the fee or charge is imposed for transferring funds from another asset account to cover a shortfall in the account accessed by the card; or

(2) A fee imposed by the issuer for the first withdrawal per calendar month from an ATM that is part of the issuer's designated ATM network.

§ 235.6 Prohibition on circumvention, evasion, and net compensation.

(a) *Prohibition of circumvention or evasion.* No person shall circumvent or evade the interchange transaction fee restrictions in §§ 235.3 and 235.4.

(b) *Prohibition of net compensation.* An issuer may not receive net compensation from a payment card network with respect to electronic debit transactions or debit card-related activities within a calendar year. Net compensation occurs when the total amount of payments or incentives received by an issuer from a payment card network with respect to electronic debit transactions or debit card-related activities, other than interchange transaction fees passed through to the issuer by the network, during a calendar year exceeds the total amount of all fees paid by the issuer to the network with respect to electronic debit transactions or debit card-related activities during that calendar year. Payments and incentives paid by a network to an issuer, and fees paid by an issuer to a network, with respect to electronic debit transactions or debit card related activities are not limited to volume-based or transaction-specific payments, incentives, or fees, but also include other payments, incentives or fees related to an issuer's provision of debit card services.

§ 235.7 Limitations on payment card restrictions.

(a) *Prohibition on network exclusivity*—(1) *In general.* An issuer or payment card network shall not directly or through any agent, processor, or licensed member of a payment card network, by contract, requirement, condition, penalty, or otherwise, restrict the number of payment card networks on which an electronic debit transaction may be processed to less than two unaffiliated networks.

(2) *Permitted arrangements.* An issuer satisfies the requirements of paragraph (a)(1) of this section only if the issuer enables at least two unaffiliated payment card networks to process an electronic debit transaction—

(i) Where such networks in combination do not, by their respective rules or policies or by contract with or other restriction imposed by the issuer, result in the operation of only one network or only multiple affiliated networks for a geographic area, specific merchant, particular type of merchant, or particular type of transaction, and

(ii) Where each of these networks has taken steps reasonably designed to be able to process the electronic debit transactions that it would reasonably expect will be routed to it, based on expected transaction volume.

(3) *Prohibited exclusivity arrangements by networks.* For purposes of paragraph (a)(1) of this section, a payment card network may not restrict or otherwise limit an issuer's ability to contract with any other payment card network that may process an electronic debit transaction involving the issuer's debit cards.

(4) *Subsequent affiliation.* If unaffiliated payment card networks become affiliated as a result of a merger or acquisition such that an issuer is no longer in compliance with paragraph (a) of this section, the issuer must add an unaffiliated payment card network through which electronic debit transactions on the relevant debit card may be processed no later than six months after the date on which the previously unaffiliated payment card networks consummate the affiliation.

(b) *Prohibition on routing restrictions.* An issuer or payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person that accepts or honors debit cards for payments to direct the routing of electronic debit transactions for processing over any payment card network that may process such transactions.

§ 235.8 Reporting requirements and record retention.

(a) *Entities required to report.* Each covered issuer shall file a report with the Board on a biennial basis in accordance with this section. Each payment card network shall file a report with the Board on an annual basis in accordance with this section.

(b) *Report.* Each entity required to file a report with the Board shall submit data in a form prescribed by the Board for that entity. Data required to be reported may include, but may not be limited to, data regarding costs incurred with respect to an electronic debit transaction, interchange transaction fees, network fees, fraud-prevention costs, fraud losses, and transaction value, volume, and type.

(c) *Record retention.* (1) An issuer subject to this part shall retain evidence of compliance with the requirements imposed by this part for a period of not less than five years after the end of the calendar year in which the electronic debit transaction occurred.

(2) Any person subject to this part having actual notice that it is the subject of an investigation or an enforcement proceeding by its enforcement agency shall retain the records that pertain to the investigation, action, or proceeding until final disposition of the matter unless an earlier time is allowed by court or agency order.

§ 235.9 Administrative enforcement.

(a) *Appropriate agency.* (1) Compliance with the requirements of this part shall be enforced under—

(i) Section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

(A) National banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

(B) Member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than federal branches, federal Agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act;

(C) Banks and state savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured state branches of foreign banks;

(ii) The Federal Credit Union Act (12 U.S.C. 1751 *et seq.*), by the Administrator of the National Credit Union Administration (National Credit Union Administration Board) with respect to any Federal credit union;

(iii) The Federal Aviation Act of 1958 (49 U.S.C. 40101 *et seq.*), by the Secretary of Transportation, with respect to any air carrier or foreign air carrier subject to that Act; and

(iv) The Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), by the Securities and Exchange Commission, with respect to any broker or dealer subject to that Act.

(2) The terms used in paragraph (a)(1) of this section that are not defined in this part or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(b) *Additional powers.* (1) For the purpose of the exercise by any agency referred to in paragraphs (a)(1)(i) through (iv) of this section of its power under any statute referred to in those paragraphs, a violation of this part is deemed to be a violation of a requirement imposed under that statute.

(2) In addition to its powers under any provision of law specifically referred to in paragraphs (a)(1)(i) through (iv) of this section, each of the agencies referred to in those paragraphs may exercise, for the purpose of enforcing compliance under this part, any other authority conferred on it by law.

(c) *Enforcement authority of Federal Trade Commission.* Except to the extent that enforcement of the requirements imposed under this title is specifically granted to another government agency under paragraphs (a)(1)(i) through (iv) of this section, and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission has the authority to enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of this part shall be deemed a violation of a requirement imposed under the Federal Trade Commission Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person subject to the jurisdiction of the Federal Trade Commission with the requirements of this part, regardless of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act.

Appendix A to Part 235—Official Board Commentary on Regulation II Introduction

The following commentary to Regulation II (12 CFR part 235) provides background material to explain the Board's intent in adopting a particular part of the regulation. The commentary also provides examples to aid in understanding how a particular requirement is to work.

Section 235.2—Definitions

2(a)—Account

1. *Types of accounts.* The term ''account'' includes accounts held by any person, including consumer accounts (*i.e.,* those established primarily for personal, family or household purposes) and business accounts. Therefore, the limitations on interchange transaction fees and the prohibitions on network exclusivity arrangements and routing restrictions apply to all electronic debit transactions, regardless of whether the transaction involves a debit card issued primarily for personal, family, or household purposes or for business purposes. For example, an issuer of a business-purpose debit card is subject to the restrictions on interchange transaction fees and is also prohibited from restricting the number of payment card networks on which an electronic debit transaction may be processed under § 235.7.

2. *Bona fide trusts.* This part does not define the term bona fide trust agreement; therefore, institutions must look to state or other applicable law for interpretation. An account held under a custodial agreement that qualifies as a trust under the Internal Revenue Code, such as an individual retirement account, is considered to be held under a trust agreement for purposes of this part.

3. *Account located in the United States.* This part applies only to electronic debit transactions that are initiated to debit (or credit, for example, in the case of returned goods or cancelled services) an account located in the United States. If a cardholder uses a debit card to debit an account held outside the United States, then the electronic debit transaction is not subject to this part.

2(b)—Acquirer

1. *In general.* The term ''acquirer'' includes only the institution that contracts, directly or indirectly, with a merchant to provide settlement for the merchant's electronic debit transactions over a payment card network (referred to as acquiring the merchant's electronic debit transactions). In some acquiring relationships, an institution provides processing services to the merchant and is a licensed member of the payment card network, but does not settle the transactions with the merchant (by crediting the merchant's account) or with the issuer. These institutions are not ''acquirers'' because they do not provide credit to the merchant for the transactions or settle the merchant's transactions with the issuer. These institutions are considered processors and in some circumstances may be considered payment card networks for purposes of this part (See §§ 235.2(n), 235.2(p), and commentary thereto).

2(c)—Affiliate

1. *Types of entities.* The term ''affiliate'' includes any bank and nonbank affiliates located in the United States or a foreign country.

2. *Other affiliates.* For commentary on whether merchants are affiliated, see comment 2(g)–7.

2(d)—Cardholder

1. *Scope.* In the case of debit cards that access funds in transaction, savings, or other similar asset accounts, ''the person to whom a card is issued'' generally will be the named person or persons holding the account. If the account is a business account, multiple employees (or other persons associated with the business) may have debit cards that can access the account. Each employee that has a debit card that can access the account is a cardholder. In the case of a prepaid card, the cardholder generally is either the purchaser of the card or a person to whom the purchaser gave the card, such as a gift recipient.

2(e)—Control [Reserved]

2(f)—Covered Issuer

1. *Asset size determination.* An issuer would qualify as a covered issuer in a particular calendar year if its total worldwide banking and nonbanking assets, including assets of affiliates, other than trust assets under management, are at least $10 billion, as of December 31 of the preceding calendar year.

2(g)—Debit Card

1. *Card, or other payment code or device.* The term ''debit card'' as defined in § 235.2(g) applies to any card, or other payment code or device, even if it is not issued in a physical form. Debit cards include, for example, an account number or code that can be used to access funds in an account to make internet purchases. Similarly, the term ''debit card'' includes a device with a chip or other embedded mechanism, such as a mobile phone or sticker containing a contactless chip that links the device to funds stored in an account, and enables an account to be debited. The term ''debit card,'' however, does not include a one-time password or other code if such password or code is used for the purposes of authenticating the cardholder and is used in addition to another card, or other payment code or device, rather than as the payment code or device.

2. *Deferred debit cards.* The term ''debit card'' includes a card, or other payment code or device, that is used in connection with deferred debit card arrangements in which transactions are not immediately posted to and funds are not debited from the underlying transaction, savings, or other asset account upon settlement of the transaction. Instead, the funds in the account typically are held and made unavailable for other transactions for a period of time specified in the issuer-cardholder agreement. After the expiration of the time period, the cardholder's account is debited for the value of all transactions made using the card that have been submitted to the issuer for settlement during that time period. For example, under some deferred debit card arrangements, the issuer may debit the consumer's account for all debit card transactions that occurred during a particular month at the end of the month. Regardless of the time period between the transaction and account posting, a card, or other payment code or device, that is used in connection with a deferred debit arrangement is considered a debit card for purposes of the requirements of this part.

3. *Decoupled debit cards.* Decoupled debit cards are issued by an entity other than the financial institution holding the cardholder's account. In a decoupled debit arrangement, transactions that are authorized by the card issuer settle against the cardholder's account held by an entity other than the issuer, generally via a subsequent ACH debit to that account. The term ''debit card'' includes any card, or other payment code or device, issued or approved for use through a payment card network to debit an account, regardless of whether the issuer holds the account. Therefore, decoupled debit cards are debit cards for purposes of this part.

4. *Hybrid cards.*

i. Some cards, or other payment codes or devices, may have both credit- and debit-like features (''hybrid cards''). For example, these cards may enable a cardholder to access a line of credit, but select certain transactions for immediate repayment (*i.e.,* prior to the end of a billing cycle) via a debit to the cardholder's account, as the term is defined in § 235.2(a), held either with the issuer or at another institution. If a card permits a cardholder to initiate transactions that debit an account or funds underlying a prepaid card, the card is considered a debit card for purposes of this part. Not all transactions initiated by such a hybrid card, however, are electronic debit transactions. Rather, only those transactions that debit an account as defined in this part or funds underlying a prepaid card are electronic debit transactions. If the transaction posts to a line of credit, then the transaction is a credit transaction.

ii. If an issuer conditions the availability of a credit or charge card that permits pre-authorized repayment of some or all transactions on the cardholder maintaining an account at the issuer, such a card is considered a debit card for purposes of this part.

5. *Virtual wallets.* A virtual wallet is a device (*e.g.,* a mobile phone) that stores several different payment codes or devices (''virtual cards'') that access different accounts, funds underlying the card, or lines of credit. At the point of sale, the cardholder may select from the virtual wallet the virtual card he or she wishes to use for payment. The virtual card that the cardholder uses for payment is considered a debit card under this part if the virtual card that initiates a transaction meets the definition of debit card, notwithstanding the fact that other cards in the wallet may not be debit cards.

6. *General-use prepaid card.* The term ''debit card'' includes general-use prepaid cards. See § 235.2(j) and related commentary for information on general-use prepaid cards.

7. *Store cards.* The term ''debit card'' does not include prepaid cards that may be used at a single merchant or affiliated merchants. Two or more merchants are affiliated if they are related by either common ownership or by common corporate control. For purposes of the ''debit card'' definition, franchisees are considered to be under common corporate control if they are subject to a common set of corporate policies or practices under the terms of their franchise licenses.

8. *Checks, drafts, and similar instruments.* The term ''debit card'' does not include a check, draft, or similar paper instrument or a transaction in which the check is used as a source of information to initiate an electronic payment. For example, if an account holder provides a check to buy goods or services and the merchant takes the account number and routing number information from the MICR line at the bottom of a check to initiate an ACH debit transfer from the cardholder's account, the check is not a debit card, and such a transaction is not considered an electronic debit transaction. Likewise, the term ''debit card'' does not include an electronic representation of a check, draft, or similar paper instrument.

9. *ACH transactions.* The term ''debit card'' does not include an account number when it is used by a person to initiate an ACH transaction that debits that person's account. For example, if an account holder buys goods or services over the internet using an account number and routing number to initiate an ACH debit, the account number is not a debit card, and such a transaction is not considered an electronic debit transaction. However, the use of a card to purchase goods or services that debits the cardholder's account that is settled by means of a subsequent ACH debit initiated by the card issuer to the cardholder's account, as in the case of a decoupled debit card arrangement, involves the use of a debit card for purposes of this part.

2(h)—Designated Automated Teller Machine (ATM) Network

1. *Reasonable and convenient access clarified.* Under § 235.2(h)(2), a designated ATM network includes any network of ATMs identified by the issuer that provides reasonable and convenient access to the issuer's cardholders. Whether a network provides reasonable and convenient access depends on the facts and circumstances, including the distance between ATMs in the designated network and each cardholder's last known home or work address, or if a home or work address is not known, where the card was first issued.

2(i)—Electronic Debit Transaction

1. *Debit an account.* The term ''electronic debit transaction'' includes the use of a card to debit an account. The account debited could be, for example, the cardholder's asset account or the account that holds the funds used to settle prepaid card transactions.

2. *Form of payment.* The term ''electronic debit transaction'' includes the use of a card as a form of payment that may be made in exchange for goods or services, as a charitable contribution, to satisfy an obligation (*e.g.,* tax liability), or for other purposes.

3. *Subsequent transactions.* The term ''electronic debit transaction'' includes both

the cardholder's use of a debit card for the initial payment and any subsequent use by the cardholder of the debit card in connection with the initial payment. For example, the term ''electronic debit transaction'' includes using the debit card to return merchandise or cancel a service that then results in a debit to the merchant's account and a credit to the cardholder's account.

4. *Cash withdrawal at the point of sale.* The term ''electronic debit transaction'' includes a transaction in which a cardholder uses the debit card both to make a purchase and to withdraw cash (known as a ''cash-back transaction'').

5. *Geographic limitation.* This regulation applies only to electronic debit transactions that are initiated at a merchant located in the United States. If a cardholder uses a debit card at a merchant located outside the United States to debit an account held in the United States, the electronic debit transaction is not subject to this part.

2(j)—General-Use Prepaid Card

1. *Redeemable upon presentation at multiple, unaffiliated merchants.* A prepaid card is redeemable upon presentation at multiple, unaffiliated merchants if such merchants agree to honor the card.

2. *Selective authorization cards.* Selective authorization cards, (*e.g.,* mall cards) are generally intended to be used or redeemed for goods or services at participating retailers within a shopping mall or other limited geographic area. Selective authorization cards are considered general-use prepaid cards, regardless of whether they carry the mark, logo, or brand of a payment card network, if they are redeemable at multiple, unaffiliated merchants.

2(k)—Interchange Transaction Fee

1. *In general.* Generally, the payment card network is the entity that establishes and charges the interchange transaction fee to the acquirers or merchants. The acquirers then pay to the issuers any interchange transaction fee established and charged by the network. Acquirers typically pass the interchange transaction fee through to merchant-customers.

2. *Compensating an issuer.* The term ''interchange transaction fee'' is limited to those fees that a payment card network establishes, charges, or receives to compensate the issuer for its role in the electronic debit transaction. By contrast, payment card networks generally charge issuers and acquirers fees for services the network performs. Such fees are not interchange transaction fees because the payment card network is charging and receiving the fee as compensation for services it provides.

3. *Established, charged, or received.* Interchange transaction fees are not limited to those fees for which a payment card network sets the value. A fee that compensates an issuer is an interchange transaction fee if the fee is set by the issuer but charged to acquirers by virtue of the network determining each participant's net settlement position.

2(l)—Issuer

1. *In general.* A person issues a debit card by authorizing the use of debit card by a cardholder to perform electronic debit transactions. That person may provide the card directly to the cardholder or indirectly by using a third party (such as a processor, or a telephone network or manufacturer) to provide the card, or other payment code or device, to the cardholder. The following examples illustrate the entity that is the issuer under various card program arrangements.

2. *Traditional debit card arrangements.* In a traditional debit card arrangement, the bank or other entity holds the cardholder's funds and authorizes the cardholder to use the debit card to access those funds through electronic debit transactions, and the cardholder receives the card directly or indirectly (*e.g.,* through an agent) from the bank or other entity that holds the funds (except for decoupled debit cards, discussed below). In this system, the bank or entity holding the cardholder's funds is the issuer.

3. *BIN-sponsor arrangements.* Payment card networks assign Bank Identification Numbers (BINs) to member-institutions for purposes of issuing cards, authorizing, clearing, settling, and other processes. In exchange for a fee or other financial consideration, some members of payment card networks permit other entities to issue debit cards using the member's BIN. The entity permitting the use of its BIN is referred to as the ''BIN sponsor'' and the entity that uses the BIN to issue cards is often referred to as the ''affiliate member.'' BIN sponsor arrangements can follow at least two different models:

i. *Sponsored debit card model.* In some cases, a community bank or credit union may provide debit cards to its account holders through a BIN sponsor arrangement with a member institution. In general, the bank or credit union will authorize its account holders to use debit cards to perform electronic debit transactions that access funds in accounts at the bank or credit union. The bank or credit union's name typically will appear on the debit card. The bank or credit union may directly or indirectly provide the cards to cardholders. Under these circumstances, the bank or credit union is the issuer for purposes of this part. Although the bank or credit union may distribute cards through the BIN sponsors, the BIN sponsor does not enter into the agreement with the cardholder that authorizes the cardholder to use the card to perform electronic debit transactions that access funds in the account at the bank or credit union, and therefore the BIN sponsor is not the issuer.

ii. *Prepaid card model.* A member institution may also serve as the BIN sponsor for a prepaid card program. Under these arrangements, a program manager distributes prepaid cards to the cardholders and the BIN-sponsoring institution generally holds the funds for the prepaid card program in an omnibus or pooled account. Either the BIN sponsor or the prepaid card program manager may keep track of the underlying funds for each individual prepaid card through subaccounts. While the cardholder may receive the card directly from the program manager or at a retailer, the BIN sponsor authorizes the cardholder to use the card to perform electronic debit transactions that access the funds in the pooled account and the cardholder's relationship generally is with the BIN sponsor. Accordingly, under these circumstances, the BIN sponsor, or the bank holding the pooled account, is the issuer.

4. *Decoupled debit cards.* In the case of decoupled debit cards, an entity other than the bank holding the cardholder's account enters into a relationship with the cardholder authorizing the use of the card to perform electronic debit transactions. The entity authorizing the use of the card to perform electronic debit transaction typically arranges for the card to be provided directly or indirectly to the cardholder and has a direct relationship with the cardholder with respect to the card. The bank holding the cardholder's account has agreed generally to permit ACH debits to the account, but has not authorized the use of the debit card to access the funds through electronic debit transactions. Under these circumstances, the entity authorizing the use of the debit card, and not the account-holding institution, is considered the issuer.

2(m)—Merchant [Reserved]

2(n)—Payment Card Network

1. *In general.* An entity is a considered a payment card network with respect to an electronic debit transaction for purposes of this rule if it routes information and data to the issuer from the acquirer to conduct authorization, clearance, and settlement of the electronic debit transaction. By contrast, if an entity receives transaction information and data from a merchant and authorizes and settles the transaction without routing the information and data to another entity (*i.e.,* the issuer or the issuer's processor) for authorization, clearance, or settlement, that entity is not considered a payment card network with respect to the electronic debit transaction.

2. *Three-party systems.* In the case of a three-party system, electronic debit transactions are processed by an entity that acts as system operator and issuer, and may also act as the acquirer. The entity acting as system operator and issuer that receives the transaction information from the merchant or acquirer also holds the cardholder's funds. Therefore, rather than directing the transaction information to a separate issuer, the entity authorizes and settles the transaction based on the information received from the merchant. As these entities do not connect (or ''network'') multiple issuers and do not route information to conduct the transaction, they are not ''payment card networks'' with respect to these transactions. 3. *Processors as payment card networks.* A processor is considered a payment card network if, in addition to acting as processor for an acquirer and issuer, the processor routes transaction information and data received from a merchant or the merchant's acquirer to an issuer. For example, if a merchant uses a processor in order to accept any, some, or all brands of debit cards and the processor routes transaction information and data to the issuer

or issuer's processor, the merchant's processor is considered a payment card network with respect to the electronic debit transaction. If the processor establishes, charges, or receives a fee for the purpose of compensating an issuer, that fee is considered an interchange transaction fee for purposes of this part.

4. *Automated clearing house (ACH) operators.* An ACH operator is not considered a payment card network for purposes of this part. While an ACH operator processes transactions that debit an account and provides for interbank clearing and settlement of such transactions, a person does not use the ACH system to accept as a form of payment a brand of debit card.

5. *ATM networks.* An ATM network is not considered a payment card network for purposes of this part. While ATM networks process transactions that debit an account and provide for interbank clearing and settlement of such transactions, a cash withdrawal from an ATM is not a payment because there is no exchange of money for goods or services, or payment made as a charitable contribution, to satisfy an obligation (*e.g.,* tax liability), or for other purposes.

2(o)—Person [Reserved]

2(p)—Processor

1. *Distinction from acquirers.* A processor may perform all transaction-processing functions for a merchant or acquirer, but if it does not acquire (that is, settle with the merchant for the transactions), it is not an acquirer. The entity that acquires electronic debit transactions is the entity that is responsible to other parties to the electronic debit transaction for the amount of the transaction.

2. *Issuers.* A processor may perform services related to authorization, clearance, and settlement of transactions for an issuer without being considered to be an issuer for purposes of this part.

2(q)—Route

1. An entity routes information if it both directs and sends the information to an unaffiliated entity (or affiliated entity acting on behalf of the unaffiliated entity). This other entity may be a payment card network or processor (if the entity directing and sending the information is a merchant or an acquirer) or an issuer or processor (if the entity directing and sending the information is a payment card network).

2(r)—United States [Reserved]

Section 235.3—Reasonable and Proportional Interchange Transaction Fees

3(a)—[Reserved]

3(b)—Reasonable and Proportional Fees

1. *Two components.* The standard for the maximum permissible interchange transaction fee that an issuer may receive consists of two components: a base component that does not vary with a transaction's value and an *ad valorem* component. The amount of any interchange transaction fee received or charged by an issuer may not exceed the sum of these components. In addition, an issuer may be permitted to receive or charge a fraud-prevention adjustment under § 235.4 of this part. 2. *Variation in interchange fees.* An issuer is permitted to charge or receive, and a network is permitted to establish, interchange transaction fees that vary based on, for example, the transaction value or the type of transaction or merchant, provided the amount of any interchange transaction fee for any transaction does not exceed the sum of the base component and the *ad valorem* component.

3. *Examples.* For a $50 electronic debit transaction performed on June 30, 2023, the maximum permissible interchange transaction fee is 23.5 cents (21.0 cents plus 5.0 basis points multiplied by $50). For a $50 electronic debit transaction performed on July 1, 2023, the maximum permissible interchange transaction fee is 16.4 cents (14.4 cents plus 4.0 basis points multiplied by $50). In addition, an issuer may be permitted to receive a fraud-prevention adjustment under § 235.4 of this part.

4. *Performance of an electronic debit transaction.* For purposes of § 235.3(b), an electronic debit transaction is considered to be performed on the date on which such transaction is settled on an interbank basis. For example, an electronic debit transaction that is authorized and cleared on June 30, 2023, but is settled on an interbank basis on July 1, 2023, is considered to be performed on July 1, 2023.

3(c)—[Reserved]

Section 235.4—Fraud-Prevention Adjustment

4(a)—Fraud-Prevention Adjustment Amount

1. *Performance of an electronic debit transaction.* For purposes of § 235.4(a), an electronic debit transaction is considered to be performed on the date on which such transaction is settled on an interbank basis. For example, an electronic debit transaction that is authorized and cleared on June 30, 2023, but is settled on an interbank basis on July 1, 2023, is considered to be performed on July 1, 2023.

4(b)—[Reserved]

4(c)(1)—Issuer Standards

1. An issuer's policies and procedures should address fraud related to debit card use by unauthorized persons. Examples of use by unauthorized persons include, but are not limited to, the following:

i. A thief steals a cardholder's wallet and uses the debit card to purchase goods, without the authority of the cardholder.

ii. A cardholder makes a purchase at a merchant. Subsequently, the merchant's employee uses information from the debit card to initiate a subsequent transaction, without the authority of the cardholder.

iii. A hacker steals cardholder account information from the issuer or a merchant processor and uses the stolen information to make unauthorized card-not-present purchases or to create a counterfeit card to make unauthorized card-present purchases.

2. An issuer's policies and procedures must be designed to reduce fraud, where cost effective, across all types of electronic debit transactions in which its cardholders engage. Therefore, an issuer should consider whether its policies and procedures are effective for each method used to authenticate the card (*e.g.,* a chip or a code embedded in the magnetic stripe) and the cardholder (*e.g.,* a signature or a PIN), and for different sales channels (*e.g.,* card-present and card-not-present).

3. An issuer's policies and procedures must be designed to take effective steps to reduce both the occurrence of and costs to all parties from fraudulent electronic debit transactions. An issuer should take steps reasonably designed to reduce the number and value of its fraudulent electronic debit transactions relative to its non-fraudulent electronic debit transactions. These steps should reduce the costs from fraudulent transactions to all parties, not merely the issuer. For example, an issuer should take steps to reduce the number and value of its fraudulent electronic debit transactions relative to its non-fraudulent transactions whether or not it bears the fraud losses as a result of regulations or network rules.

4. For any given issuer, the number and value of fraudulent electronic debit transactions relative to non-fraudulent transactions may vary materially from year to year. Therefore, in certain circumstances, an issuer's policies and procedures may be effective notwithstanding a relative increase in the transactions that are fraudulent in a particular year. However, continuing increases in the share of fraudulent transactions would warrant further scrutiny.

5. In determining which fraud-prevention technologies to implement or retain, an issuer must consider the cost-effectiveness of the technology, that is, the expected cost of the technology relative to its expected effectiveness in controlling fraud. In evaluating the cost of a particular technology, an issuer should consider whether and to what extent other parties will incur costs to implement the technology, even though an issuer may not have complete information about the costs that may be incurred by other parties, such as the cost of new merchant terminals. In evaluating the costs, an issuer should consider both initial implementation costs and ongoing costs of using the fraud-prevention method.

6. An issuer need not develop fraud-prevention technologies itself to satisfy the standards in § 235.4(c). An issuer may implement fraud-prevention technologies that have been developed by a third party that the issuer has determined are appropriate under its own policies and procedures.

4(c)(2)—Elements of Fraud-Prevention Policies and Procedures

1. *In general.* An issuer may tailor its policies and procedures to address its particular debit card program, including the size of the program, the types of transactions in which its cardholders commonly engage, fraud types and methods experienced by the issuer, and the cost of implementing new fraud-prevention methods in light of the expected fraud reduction.

4(c)(2)(i)—Methods To Identify and Prevent Fraudulent Debit Card Transactions

1. *In general.* Examples of policies and procedures reasonably designed to identify and prevent fraudulent electronic debit transactions include the following:

i. Practices to help determine whether a card is authentic and whether the user is authorized to use the card at the time of a transaction. For example, an issuer may specify the use of particular authentication technologies or methods, such as dynamic data, to better authenticate a card and cardholder at the time of the transaction, to the extent doing so does not inhibit the ability of a merchant to direct the routing of electronic debit transactions for processing over any payment card network that may process such transactions. (See § 235.7 and commentary thereto.)

ii. An automated mechanism to assess the risk that a particular electronic debit transaction is fraudulent during the authorization process (*i.e.,* before the issuer approves or declines an authorization request). For example, an issuer may use neural networks to identify transactions that present increased risk of fraud. As a result of this analysis, the issuer may decide to decline to authorize these transactions. An issuer may not be able to determine whether a given transaction in isolation is fraudulent at the time of authorization, and therefore may have implemented policies and procedures that monitor sets of transactions initiated with a cardholder's debit card. For example, an issuer could compare a set of transactions initiated with the card to a customer's typical transactions in order to determine whether a transaction is likely to be fraudulent. Similarly, an issuer could compare a set of transactions initiated with a debit card and common fraud patterns in order to determine whether a transaction or future transaction is likely to be fraudulent.

iii. Practices to support reporting of lost and stolen cards or suspected incidences of fraud by cardholders or other parties to a transaction. As an example, an issuer may promote customer awareness by providing text alerts of transactions in order to detect fraudulent transactions in a timely manner. An issuer may also report debit cards suspected of being fraudulent to their networks for inclusion in a database of potentially compromised cards.

4(c)(2)(ii)—Monitoring of the Issuer's Volume and Value of Fraudulent Electronic Debit Transactions

1. Tracking its fraudulent electronic debit transactions over time enables an issuer to assess whether its policies and procedures are effective. Accordingly, an issuer must include policies and procedures designed to monitor trends in the number and value of its fraudulent electronic debit transactions. An effective monitoring program would include tracking issuer losses from fraudulent electronic debit transactions, fraud-related chargebacks to acquirers, losses passed on to cardholders, and any other reimbursements from other parties. Other reimbursements could include payments made to issuers as a result of fines assessed to merchants for noncompliance with Payment Card Industry (PCI) Data Security Standards or other industry standards. An issuer should also establish procedures to track fraud-related information necessary to perform its reviews under § 235.4(c)(3) and to retain and report information as required under § 235.8.

4(c)(2)(iii)—Appropriate Responses to Suspicious Electronic Debit Transactions

1. An issuer may identify transactions that it suspects to be fraudulent after it has authorized or settled the transaction. For example, a cardholder may inform the issuer that the cardholder did not initiate a transaction or transactions, or the issuer may learn of a fraudulent transaction or possibly compromised debit cards from the network, the acquirer, or other parties. An issuer must implement policies and procedures designed to provide an appropriate response once an issuer has identified suspicious transactions to reduce the occurrence of future fraudulent electronic debit transactions and the costs associated with such transactions. The appropriate response may differ depending on the facts and circumstances, including the issuer's assessment of the risk of future fraudulent electronic debit transactions. For example, in some circumstances, it may be sufficient for an issuer to monitor more closely the account with the suspicious transactions. In other circumstances, it may be necessary to contact the cardholder to verify a transaction, reissue a card, or close an account. An appropriate response may also require coordination with industry organizations, law enforcement agencies, and other parties, such as payment card networks, merchants, and issuer or merchant processors.

4(c)(2)(iv)—Methods To Secure Debit Card and Cardholder Data

1. An issuer must implement policies and procedures designed to secure debit card and cardholder data. These policies and procedures should apply to data that are transmitted by the issuer (or its service provider) during transaction processing, that are stored by the issuer (or its service provider), and that are carried on media (*e.g.,* laptops, transportable data storage devices) by employees or agents of the issuer. This standard may be incorporated into an issuer's information security program, as required by Section 501(b) of the Gramm-Leach-Bliley Act.

4(c)(3)—Review of and Updates to Policies and Procedures

1. i. An issuer's assessment of the effectiveness of its policies and procedures should consider whether they are reasonably designed to reduce the number and value of fraudulent electronic debit transactions relative to non-fraudulent electronic debit transactions and are cost effective. (See comment 4(c)(1)–3 and comment 4(c)(1)–5).

ii. An issuer must also assess its policies and procedures in light of changes in fraud types (*e.g.,* the use of counterfeit cards, lost or stolen cards) and methods (*e.g.,* common purchase patterns indicating possible fraudulent behavior), as well as changes in the available methods of detecting and preventing fraudulent electronic debit transactions (*e.g.,* transaction monitoring, authentication methods) as part of its periodic review of its policies and procedures. An issuer's review of its policies and procedures must consider information from the issuer's own experience and that the issuer otherwise identified itself; information from payment card networks, law enforcement agencies, and fraud-monitoring groups in which the issuer participates; and supervisory guidance. For example, an issuer should consider warnings and alerts it receives from payment card networks regarding compromised cards and data breaches.

2. An issuer should review its policies and procedures and their implementation more frequently than annually if the issuer determines that more frequent review is appropriate based on information obtained from monitoring its fraudulent electronic debit transactions, changes in the types or methods of fraud, or available methods of detecting and preventing fraudulent electronic debit transactions. (See § 235.4(c)(1)(ii) and commentary thereto.)

3. In light of an issuer's review of its policies and procedures, and their implementation, the issuer may determine that updates to its policies and procedures, and their implementation, are necessary. Merely determining that updates are necessary does not render an issuer ineligible to receive or charge the fraud-prevention adjustment. To remain eligible to receive or charge a fraud-prevention adjustment, however, an issuer should develop and implement such updates as soon as reasonably practicable, in light of the facts and circumstances.

4(d)—Notification

1. Payment card networks that plan to allow issuers to receive or charge a fraud-prevention adjustment can develop processes for identifying issuers eligible for this adjustment. Each issuer that wants to be eligible to receive or charge a fraud-prevention adjustment must notify annually the payment card networks in which it participates of its compliance through the networks' processes.

Section 235.5—Exemptions for Certain Electronic Debit Transactions

1. *Eligibility for multiple exemptions.* An electronic debit transaction may qualify for one or more exemptions. For example, a debit card that has been provided to a person pursuant to a Federal, State, or local government-administered payment program may be issued by an issuer that is not a covered issuer. In this case, an electronic debit transaction made using that card may qualify for the exemption under § 235.5(a) for small issuers or for the exemption under § 235.5(b) for government-administered payment programs. A payment card network establishing interchange fees for transactions that qualify for more than one exemption need only satisfy itself that the issuer's transactions qualify for at least one of the exemptions in order to exempt the electronic debit transaction from the interchange fee restrictions.

2. *Certification process.* Payment card networks that plan to allow issuers to receive

higher interchange fees than permitted under §§ 235.3 and 235.4 pursuant to one of the exemptions in § 235.5 could develop their own processes for identifying issuers and products eligible for such exemptions. Section 235.5(a)(2) permits payment card networks to rely on lists published by the Board to help determine eligibility for the small issuer exemption set forth in § 235.5(a)(1).

5(a)—Exemption for Small Issuers

1. *Account that is debited.* An issuer that is not a covered issuer is exempt under § 235.5(a) only if the issuer holds the account that is debited. For example, in the case of the sponsored debit card model described in comment 235.2(l)–3(i), if the bank or credit union is not a covered issuer, then that bank or credit union is exempt from the interchange fee restrictions because the issuer holds the account that is debited. However, in the case of the decoupled debit card described in comment 235.2(l)–4, the issuer of a decoupled debit card is not exempt under § 235.5(a), regardless of asset size, because it does not hold the account that is debited.

2. *Change in status.* If an exempt issuer becomes a covered issuer based on its and its affiliates assets at the end of a calendar year, that issuer must begin complying with the interchange fee standards (§ 235.3), the fraud-prevention adjustment standards (to the extent the issuer wishes to receive a fraud-prevention adjustment) (§ 235.4), and the provisions prohibiting circumvention, evasion, and net compensation (§ 235.6) no later than July 1.

5(b)—Exemption for Government-Administered Payment Programs

1. *Government-administered payment program.* A program is considered government-administered regardless of whether a Federal, State, or local government agency operates the program or outsources some or all functions to third parties so long as the program is operated on behalf of the government agency. In addition, a program may be government-administered even if a Federal, State, or local government agency is not the source of funds for the program it administers. For example, child support programs are government-administered programs even though a Federal, State, or local government agency is not the source of funds. A tribal government is considered a local government for purposes of this exemption.

5(c)—Exemption for Certain Reloadable Prepaid Cards

1. *Subaccount clarified.* A subaccount is an account within an account, opened in the name of an agent, nominee, or custodian for the benefit of two or more cardholders, where the transactions and balances of individual cardholders are tracked in such subaccounts. An account that is opened solely in the name of a single cardholder is not a subaccount.

2. *Reloadable.* A general-use prepaid card is ''reloadable'' if the terms and conditions of the agreement permit funds to be added to the general-use prepaid card at any time after the initial purchase or issuance. A general-use prepaid card is not ''reloadable'' merely because the issuer or processor is technically able to add functionality that would otherwise enable the general-use prepaid card to be reloaded.

3. *Marketed or labeled as a gift card or gift certificate.*

i. Electronic debit transactions made using a reloadable general-use prepaid card are not exempt from the interchange fee restrictions if the card is marketed or labeled as a gift card or gift certificate. The term ''marketed or labeled as a gift card or gift certificate'' means directly or indirectly offering, advertising or otherwise suggesting the potential use of a general-use prepaid card as a gift for another person. Whether the exclusion applies generally does not depend on the type of entity that makes the promotional message. For example, a card may be marketed or labeled as a gift card or gift certificate if anyone (other than the purchaser of the card), including the issuer, the retailer, the program manager that may distribute the card, or the payment network on which a card is used, promotes the use of the card as a gift card or gift certificate. A general-use prepaid card is marketed or labeled as a gift card or gift certificate even if it is only occasionally marketed as a gift card or gift certificate. For example, a network-branded general purpose reloadable card would be marketed or labeled as a gift card or gift certificate if the issuer principally advertises the card as a less costly alternative to a bank account but promotes the card in a television, radio, newspaper, or internet advertisement, or on signage as ''the perfect gift'' during the holiday season.

ii. The mere mention of the availability of gift cards or gift certificates in an advertisement or on a sign that also indicates the availability of exempted general-use prepaid cards does not by itself cause the general-use prepaid card to be marketed as a gift card or a gift certificate. For example, the posting of a sign in a store that refers to the availability of gift cards does not by itself constitute the marketing of otherwise exempted general-use prepaid cards that may also be sold in the store along with gift cards or gift certificates, provided that a person acting reasonably under the circumstances would not be led to believe that the sign applies to all cards sold in the store. (See, however, comment 5(c)–4.ii.)

4. *Examples of marketed or labeled as a gift card or gift certificate.*

i. The following are examples of marketed or labeled as a gift card or gift certificate:

A. Using the word ''gift'' or ''present'' on a card or accompanying material, including documentation, packaging and promotional displays;

B. Representing or suggesting that a card can be given to another person, for example, as a ''token of appreciation'' or a ''stocking stuffer,'' or displaying a congratulatory message on the card or accompanying material;

C. Incorporating gift-giving or celebratory imagery or motifs, such as a bow, ribbon, wrapped present, candle, or a holiday or congratulatory message, on a card, accompanying documentation, or promotional material;

ii. The term does not include the following:

A. Representing that a card can be used as a substitute for a checking, savings, or deposit account;

B. Representing that a card can be used to pay for a consumer's health-related expenses—for example, a card tied to a health savings account;

C. Representing that a card can be used as a substitute for travelers checks or cash;

D. Representing that a card can be used as a budgetary tool, for example, by teenagers, or to cover emergency expenses.

5. *Reasonable policies and procedures to avoid marketing as a gift card.* The exemption for a general-use prepaid card that is reloadable and not marketed or labeled as a gift card or gift certificate in § 235.5(c) applies if a reloadable general-use prepaid card is not marketed or labeled as a gift card or gift certificate and if persons involved in the distribution or sale of the card, including issuers, program managers, and retailers, maintain policies and procedures reasonably designed to avoid such marketing. Such policies and procedures may include contractual provisions prohibiting a reloadable general-use prepaid card from being marketed or labeled as a gift card or gift certificate, merchandising guidelines or plans regarding how the product must be displayed in a retail outlet, and controls to regularly monitor or otherwise verify that the general-use prepaid card is not being marketed as a gift card. Whether a general-use prepaid card has been marketed as a gift card or gift certificate will depend on the facts and circumstances, including whether a reasonable person would be led to believe that the general-use prepaid card is a gift card or gift certificate. The following examples illustrate the application of § 235.5(c):

i. An issuer or program manager of prepaid cards agrees to sell general-purpose reloadable cards through a retailer. The contract between the issuer or program manager and the retailer establishes the terms and conditions under which the cards may be sold and marketed at the retailer. The terms and conditions prohibit the general-purpose reloadable cards from being marketed as a gift card or gift certificate, and require policies and procedures to regularly monitor or otherwise verify that the cards are not being marketed as such. The issuer or program manager sets up one promotional display at the retailer for gift cards and another physically separated display for exempted products under § 235.5(c), including general-purpose reloadable cards, such that a reasonable person would not believe that the exempted cards are gift cards. The exemption in § 235.5(c) applies because policies and procedures reasonably designed to avoid the marketing of the general-purpose reloadable cards as gift cards or gift certificates are maintained, even if a retail clerk inadvertently stocks or a consumer inadvertently places a general-purpose reloadable card on the gift card display.

ii. Same facts as in comment 5(c)–5.i, except that the issuer or program manager sets up a single promotional display at the retailer on which a variety of prepaid cards are sold, including store gift cards and general-purpose reloadable cards. A sign stating ''Gift Cards'' appears prominently at the top of the display. The exemption in § 235.5(c) does not apply with respect to the general-purpose reloadable cards because policies and procedures reasonably designed to avoid the marketing of exempted cards as gift cards or gift certificates are not maintained.

iii. Same facts as in comment 5(c)–5.i, except that the issuer or program manager sets up a single promotional multi-sided display at the retailer on which a variety of prepaid card products, including store gift cards and general-purpose reloadable cards are sold. Gift cards are segregated from exempted cards, with gift cards on one side of the display and exempted cards on a different side of a display. Signs of equal prominence at the top of each side of the display clearly differentiate between gift cards and the other types of prepaid cards that are available for sale. The retailer does not use any more conspicuous signage suggesting the general availability of gift cards, such as a large sign stating ''Gift Cards'' at the top of the display or located near the display. The exemption in § 235.5(c) applies because policies and procedures reasonably designed to avoid the marketing of the general-purpose reloadable cards as gift cards or gift certificates are maintained, even if a retail clerk inadvertently stocks or a consumer inadvertently places a general-purpose reloadable card on the gift card display.

iv. Same facts as in comment 5(c)–5.i, except that the retailer sells a variety of prepaid card products, including store gift cards and general-purpose reloadable cards, arranged side-by-side in the same checkout lane. The retailer does not affirmatively indicate or represent that gift cards are available, such as by displaying any signage or other indicia at the checkout lane suggesting the general availability of gift cards. The exemption in § 235.5(c) applies because policies and procedures reasonably designed to avoid marketing the general-purpose reloadable cards as gift cards or gift certificates are maintained.

6. *On-line sales of prepaid cards.* Some websites may prominently advertise or promote the availability of gift cards or gift certificates in a manner that suggests to a consumer that the website exclusively sells gift cards or gift certificates. For example, a website may display a banner advertisement or a graphic on the home page that prominently states ''Gift Cards,'' ''Gift Giving,'' or similar language without mention of other available products, or use a web address that includes only a reference to gift cards or gift certificates in the address. In such a case, a consumer acting reasonably under the circumstances could be led to believe that all prepaid products sold on the website are gift cards or gift certificates. Under these facts, the website has marketed all such products as gift cards or gift certificates, and the exemption in § 235.5(c) does not apply to any products sold on the website.

7. *Temporary non-reloadable cards issued in connection with a general-use reloadable card.* Certain general-purpose prepaid cards that are typically marketed as an account substitute initially may be sold or issued in the form of a temporary non-reloadable card. After the card is purchased, the cardholder is typically required to call the issuer to register the card and to provide identifying information in order to obtain a reloadable replacement card. In most cases, the temporary non-reloadable card can be used for purchases until the replacement reloadable card arrives and is activated by the cardholder. Because the temporary non-reloadable card may only be obtained in connection with the reloadable card, the exemption in § 235.5(c) applies so long as the card is not marketed as a gift card or gift certificate.

5(d)—Exception

1. *Additional ATM access.* Some debit cards may be used to withdraw cash from ATMs that are not part of the issuer's designated ATM network. An electronic debit card transaction may still qualify for the exemption under §§ 235.5(b) or (c) with a respect to a card for which a fee may be imposed for a withdrawal from an ATM that is outside of the issuer's designated ATM network as long as the card complies with the condition set forth in § 235.5(d)(2) for withdrawals within the issuer's designated ATM network. The condition with respect to ATM fees does not apply to cards that do not provide ATM access.

Section 235.6—Prohibition on Circumvention, Evasion, and Net Compensation

6(a)—Prohibition of Circumvention or Evasion

1. *Finding of circumvention or evasion.* A finding of evasion or circumvention will depend on all relevant facts and circumstances. Although net compensation may be one form of circumvention or evasion prohibited under § 235.6(a), it is not the only form.

2. *Examples of circumstances that may constitute circumvention or evasion.* The following examples do not constitute per se circumvention or evasion, but may warrant additional supervisory scrutiny to determine whether the totality of the facts and circumstances constitute circumvention or evasion:

i. A payment card network decreases network processing fees paid by issuers for electronic debit transactions by 50 percent and increases the network processing fees charged to merchants or acquirers with respect to electronic debit transactions by a similar amount. Because the requirements of this subpart do not restrict or otherwise establish the amount of fees that a network may charge for its services, the increase in network fees charged to merchants or acquirers and decrease in fees charged to issuers is not a per se circumvention or evasion of the interchange transaction fee standards, but may warrant additional supervisory scrutiny to determine whether the facts and circumstances constitute circumvention or evasion.

ii. An issuer replaces its debit cards with prepaid cards that are exempt from the interchange limits of §§ 235.3 and 235.4. The exempt prepaid cards are linked to its customers' transaction accounts and funds are swept from the transaction accounts to the prepaid accounts as needed to cover transactions made. Again, this arrangement is not per se circumvention or evasion, but may warrant additional supervisory scrutiny to determine whether the facts and circumstances constitute circumvention or evasion.

6(b)—Prohibition of Net Compensation

1. *Net compensation.* Net compensation to an issuer through the use of network fees is prohibited.

2. *Consideration of payments or incentives provided by the network in net compensation determination.*

i. For purposes of the net compensation determination, payments or incentives paid by a payment card network to an issuer with respect to electronic debit transactions or debit card related activities could include, but are not limited to, marketing incentives; payments or rebates for meeting or exceeding a specific transaction volume, percentage share, or dollar amount of transactions processed; or other payments for debit card related activities. For example, signing bonuses paid by a network to an issuer for the issuer's debit card portfolio would also be included in the total amount of payments or incentives received by an issuer from a payment card network with respect to electronic debit transactions. A signing bonus for an entire card portfolio, including credit cards, may be allocated to the issuer's debit card business based on the proportion of the cards or transactions that are debit cards or electronic debit transactions, as appropriate to the situation, for purposes of the net compensation determination.

ii. Incentives paid by the network with respect to multiple-year contracts may be allocated over the life of the contract.

iii. For purposes of the net compensation determination, payments or incentives paid by a payment card network with respect to electronic debit transactions or debit card-related activities do not include interchange transaction fees that are passed through to the issuer by the network, or discounts or rebates provided by the network or an affiliate of the network for issuer-processor services. In addition, funds received by an issuer from a payment card network as a result of chargebacks, fines paid by merchants or acquirers for violations of network rules, or settlements or recoveries from merchants or acquirers to offset the costs of fraudulent transactions or a data security breach do not constitute incentives or payments made by a payment card network.

3. *Consideration of fees paid by an issuer in net compensation determination.*

i. For purposes of the net compensation determination, fees paid by an issuer to a payment card network with respect to electronic debit transactions or debit card related activities include, but are not limited to, membership or licensing fees, network administration fees, and fees for optional network services, such as risk management services.

ii. For purposes of the net compensation determination, fees paid by an issuer to a payment card network with respect to electronic debit transactions or debit card-related activities do not include network processing fees (such as switch fees and network connectivity fees) or fees paid to an issuer processor affiliated with the network for authorizing, clearing, or settling an electronic debit transaction.

4. *Example of circumstances not involving net compensation to the issuer.* The following example illustrates circumstances that would not indicate net compensation by the payment card network to the issuer:

i. Because of an increase in debit card transactions that are processed through a payment card network during a calendar year, an issuer receives an additional volume-based incentive payment from the network for that period. Over the same period, however, the total network fees (other than processing fees) the issuer pays the payment card network with respect to debit card transactions also increase so that the total amount of fees paid by the issuer to the network continue to exceed incentive payments by the network to the issuer. Under these circumstances, the issuer does not receive net compensation from the network for electronic debit transactions or debit card related activities.

Section 235.7—Limitations on Payment Card Restrictions

7(a)—Prohibition on Network Exclusivity

1. *Scope of restriction.* Section 235.7(a) requires an issuer to configure each of its debit cards so that each electronic debit transaction performed with such card can be processed on at least two unaffiliated payment card networks. In particular, section § 235.7(a) requires this condition to be satisfied for each geographic area, specific merchant, particular type of merchant, and particular type of transaction for which the issuer's debit card can be used to perform an electronic debit transaction. As long as the condition is satisfied for each such case, section § 235.7(a) does not require the condition to be satisfied for each method of cardholder authentication (*e.g.,* signature, PIN, biometrics, any other method of cardholder authentication that may be developed in the future, or the lack of a method of cardholder authentication). For example, it is sufficient for an issuer to issue a debit card that can perform signature-authenticated transactions only over one payment card network and PIN-authenticated transactions only over another payment card network, as long as the two payment card networks are not affiliated and each network can be used to process electronic debit transactions for every geographic area, specific merchant, particular type of merchant, and particular type of transaction for which the issuer's debit card can be used to perform an electronic debit transaction.

2. *Issuer's role.* Section 235.7(a) does not require an issuer to ensure that two or more unaffiliated payment card networks will actually be available to the merchant to process every electronic debit transaction. To comply with the requirement in § 235.7(a), it is sufficient for an issuer to configure each of its debit cards so that each electronic debit transaction performed with such card can be processed on at least two unaffiliated payment card networks, even if the networks that are actually available to the merchant for a particular transaction are limited by, for example, the card acceptance technologies that a merchant adopts, or the networks that the merchant accepts.

3. *Permitted networks.*

i. *Network volume capabilities.* A payment card network could be used to satisfy the requirement that an issuer enable two unaffiliated payment card networks for each electronic debit transaction if the network was either (a) capable of processing the volume of electronic debit transactions that it would reasonably expect to be routed to it or (b) willing to expand its capabilities to meet such expected transaction volume. If, however, the network's policy or practice is to limit such expansion, it would not qualify as one of the two unaffiliated payment card networks.

ii. *Reasonable volume expectations.* One of the steps a payment card network can take to form a reasonable expectation of its transaction volume is to consider factors such as the number of cards expected to be issued that are enabled by an issuer on the network and expected card usage patterns.

iii. *Examples of permitted arrangements.* For each geographic area (*e.g.,* New York State), specific merchant (*e.g.,* a specific fast food restaurant chain), particular type of merchant (*e.g.,* fast food restaurants), and particular type of transaction (*e.g.,* card-not-present transaction) for which the issuer's debit card can be used to perform an electronic debit transaction, an issuer must enable at least two unaffiliated payment card networks, but those payment card networks do not necessarily have to be the same two payment card networks for every transaction.

A. *Geographic area:* An issuer complies with the rule only if, for each geographic area in which the issuer's debit card can be used to perform an electronic debit transaction, the issuer enables at least two unaffiliated payment card networks. For example, an issuer could comply with the rule by enabling two unaffiliated payment card networks that can each process transactions in all 50 U.S. states. Alternatively, the issuer could comply with the rule by enabling three unaffiliated payment card networks, A, B, and C, where network A can process transactions in all 50 U.S. states, network B can process transactions in the 48 contiguous United States, and network C can process transactions in Alaska and Hawaii.

B. *Particular type of transaction:* An issuer complies with the rule only if, for each particular type of transaction for which the issuer's debit card can be used to perform an electronic debit transaction, the issuer enables at least two unaffiliated payment card networks. For example, an issuer could comply with the rule by enabling two unaffiliated payment card networks that can each process both card-present and card-not-present transactions. Alternatively, the issuer could comply with the rule by enabling three unaffiliated payment card networks, A, B, and C, where network A can process both card-present and card-not-present transactions, network B can process card-present transactions, and network C can process card-not-present transactions.

4. *Examples of prohibited network restrictions on an issuer's ability to contract with other payment card networks.* The following are examples of prohibited network restrictions on an issuer's ability to contract with other payment card networks:

i. Network rules or contract provisions limiting or otherwise restricting the other payment card networks that an issuer may enable on a particular debit card, or network rules or contract provisions that specify the other networks that an issuer may enable on a particular debit card.

ii. Network rules or guidelines that allow only that payment card network's (or its affiliated networks') brand, mark, or logo to be displayed on a particular debit card, or that otherwise limit the ability of brands, marks, or logos of other payment card networks to appear on the debit card.

5. *Network logos or symbols on card not required.* Section 235.7(a) does not require that a debit card display the brand, mark, or logo of each payment card network over which an electronic debit transaction may be processed. For example, the rule does not require a debit card that an issuer enables on two or more unaffiliated payment card networks to bear the brand, mark, or logo of each such payment card network.

6. *Voluntary exclusivity arrangements prohibited.* Section 235.7(a) requires that an issuer enable at least two unaffiliated payment card networks to process an electronic debit transaction, even if the issuer is not subject to any rule of, or contract or other agreement with, a payment card network requiring that all or a specified minimum percentage of electronic debit transactions be processed on the network or its affiliated networks.

7. *Affiliated payment card networks.* Section 235.7(a) does not prohibit an issuer from enabling two affiliated payment card networks among the networks on a particular debit card, as long as at least two of the networks that can be used to process each electronic debit transaction are unaffiliated.

8. *Application of rule regardless of form.* The network exclusivity provisions in § 235.7(a) apply to electronic debit transactions performed with any debit card as defined in § 235.2, regardless of the form of such debit card. For example, the requirement applies to electronic debit transactions performed using a plastic card, a supplemental device such as a fob, information stored inside an e-wallet on a mobile phone or other device, or any other form of debit card, as defined in § 235.2, that may be developed in the future.

7(b)—Prohibition on Routing Restrictions

1. *Relationship to the network exclusivity restrictions.* An issuer or payment card network is prohibited from inhibiting a merchant's ability to direct the routing of an electronic debit transaction over any of the payment card networks that the issuer has enabled to process electronic debit transactions performed with a particular debit card. The rule does not require that an issuer allow a merchant to route a transaction over a payment card network that the issuer did not enable to process transactions performed with that debit card.

2. *Examples of prohibited merchant restrictions.* The following are examples of issuer or network practices that would inhibit a merchant's ability to direct the routing of an electronic debit transaction and that are therefore prohibited under § 235.7(b):

i. Prohibiting a merchant from encouraging or discouraging a cardholder's use of a particular method of cardholder authentication, for example prohibiting merchants from favoring a cardholder's use of one cardholder authentication method over another, or from discouraging the cardholder's use of any given cardholder authentication method, as further described in comment 7(a)–1.

ii. Establishing network rules or designating issuer priorities directing the processing of an electronic debit transaction on a specified payment card network or its affiliated networks, or directing the processing of the transaction away from a specified payment card network or its affiliates, except as (A) a default rule in the event the merchant, or its acquirer or processor, does not designate a routing preference, or (B) if required by state law.

iii. Requiring a specific payment card network to be used based on the form of debit card presented by the cardholder to the merchant (*e.g.,* plastic card, payment code, or any other form of debit card as defined in § 235.2).

3. *Merchant payments not prohibited.* A payment card network does not restrict a merchant's ability to route transactions over available payment card networks in violation of § 235.7(b) by offering payments or other incentives to encourage the merchant to route electronic debit card transactions to the network for processing.

4. *Real-time routing decision not required.* A merchant need not make network routing decisions on a transaction-by-transaction basis. A merchant and its acquirer or processor may agree to a pre-determined set of routing choices that apply to all electronic debit transactions that are processed by the acquirer or processor on behalf of the merchant.

5. *No effect on network rules governing the routing of subsequent transactions.* Section 235.7 does not supersede a payment card network rule that requires a chargeback or return of an electronic debit transaction to be processed on the same network that processed the original transaction.

Section 235.8—Reporting Requirements and Record Retention

8(a)—Entities Required To Report

1. *Two surveys.* The Board conducts a survey of covered issuers on a biennial basis using FR 3064a (OMB No. 7100–0344) and a survey of payment card networks on an annual basis using FR 3064b (OMB No. 7100–0344). Each survey collects information concerning electronic debit transactions performed during the previous calendar year.

2. *Change in status.* An issuer that is a covered issuer during the year in which the Board conducts a survey of covered issuers but was not a covered issuer during the previous calendar year is exempt from the reporting requirement in § 235.8.

8(b)—[Reserved]

8(c)—[Reserved]

Section 235.9—Administrative Enforcement

[Reserved]

Appendix B to Part 235—Determination of Base Component, Ad Valorem Component, and Fraud-Prevention Adjustment

(a) *In general.* For every two-year period beginning with the period from July 1, 2025, to June 30, 2027 (each an ''applicable period''), the Board will determine the base component and the *ad valorem* component as set forth in § 235.3 and the fraud-prevention adjustment as set forth in § 235.4 using the approach described in this appendix B.

(b) *Basis for determination.* The Board will determine the amounts described in paragraph (a) of this appendix for an applicable period using the data reported to the Board by covered issuers pursuant to § 235.8 concerning transactions performed during the calendar year that is two years prior to the year in which the applicable period begins.

(c) *Base component*—(1) *Formula.* The base component for an applicable period is the product of the transaction-weighted average of per-transaction allowable costs (excluding fraud losses) across covered issuers, based on the data described in paragraph (b) of this appendix, and 3.7, rounded to the nearest tenth of one cent.

(2) *Allowable costs (excluding fraud losses).* For purposes of paragraph (c)(1) of this appendix, allowable costs (excluding fraud losses) are the sum of costs of authorization, clearance, and settlement, as reported on line 3a of section II of FR 3064a (OMB No. 7100–0344), and transactions monitoring costs tied to authorization, as reported on line 5a.1 of section II of FR 3064a (OMB No. 7100–0344).

(3) *Transaction-weighted average of per-transaction allowable costs (excluding fraud losses) across covered issuers.* For purposes of paragraph (c)(1) of this appendix, the Board determines the transaction-weighted average of per-transaction allowable costs (excluding fraud losses) across covered issuers by:

(i) Summing allowable costs (excluding fraud losses) across covered issuers that reported allowable costs (excluding fraud losses);

(ii) Dividing this sum by the sum of the total number of electronic debit transactions, as reported on line 1a of section II of FR 3064a (OMB No. 7100–0344), across covered issuers that reported allowable costs (excluding fraud losses); and

(iii) Rounding this result to the nearest tenth of one cent.

(d) *Ad valorem component*—(1) *Metric.* The *ad valorem* component for an applicable period is, for a particular electronic debit transaction, the median ratio of issuer fraud losses to transaction value among covered issuers, based on the data described in paragraph (b) of this appendix, rounded to the nearest quarter of one basis point, multiplied by the value of the electronic debit transaction.

(2) *Ratio of issuer fraud losses to transaction value.* For purposes of paragraph (d)(1) of this appendix, issuer fraud losses are the value of fraud losses incurred by the covered issuer, as reported on line 8b of section II of FR 3064a (OMB No. 7100–0344). The ratio of issuer fraud losses to transaction value is issuer fraud losses divided by the total value of electronic debit transactions reported on line 1a of section II of FR 3064a (OMB No. 7100–0344).

(3) *Median ratio of issuer fraud losses to transaction value among covered issuers.* For purposes of paragraph (d)(1) of this appendix, the Board determines the median ratio of issuer fraud losses to transaction value among covered issuers by:

(i) For each covered issuer that reported issuer fraud losses, determining the ratio of issuer fraud losses to transaction value;

(ii) Sorting these ratios in ascending order; and

(iii) Selecting the ratio in the middle (if the number of ratios is odd) or calculating the simple average of the two ratios in the middle (if the number of ratios is even).

(e) *Fraud-prevention adjustment*—(1) *Metric.* The fraud-prevention adjustment for an applicable period is the median per-transaction fraud-prevention costs among covered issuers, based on the data described in paragraph (b) of this appendix, rounded to the nearest tenth of one cent.

(2) *Per-transaction fraud-prevention costs.* For purposes of paragraph (e)(1) of this appendix, fraud-prevention costs are total fraud-prevention and data-security costs, as reported on line 5a of section II of FR 3064a (OMB No. 7100–0344), minus transactions monitoring costs tied to authorization, as reported on line 5a.1 of section II of FR 3064a (OMB No. 7100–0344). Per-transaction fraud-prevention costs are fraud-prevention costs divided by the total number of electronic debit transactions reported on line 1a of section II of FR 3064a (OMB No. 7100–0344).

(3) *Median per-transaction fraud-prevention costs among covered issuers.* For purposes of paragraph (e)(1) of this appendix, the Board determines the median per-transaction fraud-prevention costs among covered issuers by:

(i) For each covered issuer that reported fraud-prevention costs, determining per-transaction fraud-prevention costs;

(ii) Sorting these values in ascending order; and

(iii) Selecting the value in the middle (if the number of values is odd) or calculating the simple average of the two values in the middle (if the number of values is even).

(f) *Publication of applicable amounts.* The Board will publish in the **Federal Register** the amounts described in paragraph (a) of this appendix for an applicable period no later than March 31 of the calendar year in which the applicable period begins.

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2023–24034 Filed 11–13–23; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL REGISTER

Vol. 88 Tuesday,

No. 218 November 14, 2023

Part III

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Income and Currency Gain or Loss With Respect to a Qualified Business Unit; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–132422–17]

RIN 1545–BO07

Income and Currency Gain or Loss With Respect to a Qualified Business Unit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and partial withdrawal of notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the determination of taxable income or loss and foreign currency gain or loss with respect to a qualified business unit. These proposed regulations include an election to treat all items of a qualified business unit as marked items (subject to a loss suspension rule), an election to recognize all foreign currency gain or loss with respect to a qualified business unit on an annual basis, and a new transition rule.

DATES: Written or electronic comments and requests for a public hearing must be received by February 12, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–132422–17) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG–132422–17), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations generally, Raphael J. Cohen at (202) 317–6938; concerning consolidated groups, Jeremy Aron-Dine at (202) 317–6847; concerning submissions of comments, requests for a public hearing, and access to a public hearing, Vivian Hayes at (202) 317–5306 (not toll-free numbers) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

I. Overview

This document contains proposed regulations (the ''proposed regulations'') under section 987 and related provisions under sections 861, 985 through 989, and 1502 of the Internal Revenue Code (''Code''). Section 987 applies to any taxpayer that has a qualified business unit (''QBU'') with a functional currency other than the dollar. Section 987(1) and (2) provide rules for determining and translating taxable income or loss (''section 987 taxable income or loss'') with respect to the QBU. In addition, foreign currency gain or loss must be determined under section 987(3) (''section 987 gain or loss''), which requires proper adjustments (as prescribed by the Secretary) for transfers of property between QBUs of the taxpayer having different functional currencies. Section 989(c) authorizes the Secretary to prescribe necessary and appropriate regulations, including regulations limiting the recognition of foreign currency loss on certain remittances from QBUs.

II. Regulations Addressing the Application of Section 987

A. 1991 Proposed Regulations and Notice 2000–20

On September 25, 1991, the Treasury Department and the IRS published in the **Federal Register** proposed regulations under section 987 (56 FR 48457, September 25, 1991) (''1991 proposed regulations''). The 1991 proposed regulations provided that section 987 taxable income or loss is computed in the QBU's functional currency and is translated into the taxpayer's functional currency at the weighted average exchange rate for the taxable year. For purposes of determining section 987 gain or loss, taxpayers were required to maintain an equity pool in the QBU's functional currency and a basis pool in the taxpayer's functional currency. The equity and basis pools were increased by the QBU's earnings and by capital contributed to the QBU, and they were reduced by remittances, losses, and other transfers from the QBU. Taxpayers recognized section 987 gain or loss at the time of a remittance or upon a termination of the QBU. The amount of section 987 gain or loss recognized was equal to the difference between the value of the remittance in the taxpayer's functional currency (translated at the applicable spot rate) and the portion of the basis pool attributable to the remittance. Thus, under the 1991 proposed regulations, section 987 gain or loss was determined by reference to a taxpayer's entire equity interest in a QBU. The 1991 proposed regulations reserved on the treatment of partnerships.

On April 3, 2000, the Treasury Department and the IRS issued Notice 2000–20, 2000–1 C.B. 851. The Notice expressed concern that the 1991 proposed regulations may not have achieved their goal of providing administrable rules that result in foreign currency gain and loss recognition under the appropriate circumstances. The Notice also identified certain abusive transactions that could inappropriately accelerate recognition of section 987 loss under the 1991 proposed regulations.

B. 2006 Proposed Regulations

1. Concerns Relating to the 1991 Proposed Regulations

On September 7, 2006, the Treasury Department and the IRS withdrew the 1991 proposed regulations and published in the **Federal Register** new proposed regulations under section 987 (71 FR 52876, September 7, 2006) (''2006 proposed regulations''). The preamble to the 2006 proposed regulations explained that the IRS had identified many cases in which taxpayers inappropriately claimed substantial section 987 losses resulting from the application of the 1991 proposed regulations when a QBU's functional currency depreciated relative to the functional currency of its owner. The 1991 proposed regulations also could create a ''trap for the unwary'' by requiring recognition of large section 987 gains when a QBU's functional currency appreciated.

These results arose because the 1991 proposed regulations imputed section 987 gain or loss to all assets and liabilities of a QBU, regardless of whether those assets and liabilities were economically exposed to currency fluctuations or had been subject to a realization event, and because the 1991 proposed regulations did not limit the selective recognition of section 987 losses. Consequently, under the 1991 proposed regulations, exchange rate fluctuations that, at most, had only an uncertain and remote effect on the economic results experienced by the owner of a QBU could give rise to substantial section 987 gains and losses that taxpayers could selectively recognize by strategically timing remittances or causing a termination of the QBU. For example, the 1991 proposed regulations provided taxpayers with substantial flexibility to recognize section 987 losses selectively by causing QBUs with a weak functional currency to make remittances while avoiding remittances from QBUs with a strong functional currency that would give rise to gains.

2. Foreign Exchange Exposure Pool Method

To address the concerns relating to the 1991 proposed regulations, the 2006 proposed regulations provided a new method of applying section 987, referred to as the foreign exchange exposure pool (''FEEP'') method. Under the FEEP method, the owner of a QBU that is subject to section 987 (''section 987 QBU'') determines all items of income, gain, deduction, and loss attributable to the QBU in the QBU's functional currency, and then translates those items into the owner's functional currency. For this purpose, the basis of certain assets (referred to as ''historic assets'') is translated at the exchange rate for the date on which the asset was acquired (the ''historic rate''). For example, cost recovery deductions, such as depreciation, in respect of historic assets are translated at the historic rate. Other items (including the amount realized on a sale or exchange of a historic asset) are translated into the owner's functional currency at the average exchange rate for the taxable year.

In addition, the owner of a section 987 QBU must determine the pool of unrecognized section 987 gain or loss (''net unrecognized section 987 gain or loss'') based on the annual increase or decrease to the section 987 QBU's balance sheet that is attributable to foreign exchange rate fluctuations. The amount of section 987 gain or loss that is added to the pool each year is equal to the increase or decrease in the basis of assets (net of the amount of liabilities) of the section 987 QBU, measured in the owner's functional currency and adjusted for transfers between the section 987 QBU and its owner and section 987 taxable income or loss. *See* § 1.987–4(d) of the 2006 proposed regulations. For this purpose, certain assets and liabilities (referred to as ''historic items'') are translated into the owner's functional currency at the historic rate, while others (referred to as ''marked items'') are translated into the owner's functional currency at the applicable spot rate. As a result, when translated into the owner's functional currency, the balance sheet value of marked items fluctuates when the QBU's functional currency strengthens or weakens, but the balance sheet value of historic items does not.

Marked items and historic items are defined by reference to section 988. A marked item is an asset or liability that would generate gain or loss under section 988 if it were held or entered into directly by the owner of the section 987 QBU but is not a section 988 transaction with respect to the QBU itself. A historic item is an asset or liability that is not a marked item. Thus, under the FEEP method, section 987 gain or loss reflects currency fluctuations with respect to marked items, which would be subject to section 988 in the hands of the QBU's owner. By contrast, section 987 gain or loss is not imputed to historic items that are not subject to section 988.

As a result of the use of a balance sheet approach, together with the use of historic rates for historic items, the FEEP method distinguishes between those items whose value is highly correlated with exchange rates and those items for which exchange rate fluctuations have no effect on value, or only an uncertain or remote effect that is more appropriately recognized upon a realization event with respect to that item. Unlike the 1991 proposed regulations, which imputed section 987 gain or loss to all assets and liabilities of a QBU, section 987 gain or loss under the FEEP method relates to those assets and liabilities that are economically exposed to currency fluctuations. The FEEP method also minimizes a taxpayer's ability to recognize large section 987 losses unrelated to its economic exposure and, thus, the need for a limitation on the selective recognition of such losses.

3. Partnerships

The 2006 proposed regulations applied section 987 to partnerships using an aggregate approach. Under this approach, an individual or corporation that is a partner in a partnership is treated as an indirect owner of a portion of the assets and liabilities of the partnership for purposes of section 987. If the partner indirectly owns a QBU with a functional currency different from that of the partner, the QBU is a section 987 QBU, and the partner determines and recognizes section 987 gain or loss with respect to the section 987 QBU under the FEEP method. An elective de minimis exception was provided for partners with a less than five percent interest in a partnership.

4. Transition Rules

The 2006 proposed regulations provided two alternative methods for taxpayers to transition from their prior method of applying section 987: the ''deferral transition method'' and the ''fresh start transition method.'' Under both transition methods, all the taxpayer's section 987 QBUs were deemed to terminate on the day before the transition date, and the owner was treated as having transferred each section 987 QBU's assets and liabilities to a new section 987 QBU on the transition date. The transition date was defined as the first day of the first taxable year to which the 2006 proposed regulations apply to a taxpayer.

Under the deferral transition method, section 987 gain or loss determined on the date of the deemed termination (under the taxpayer's prior method) was treated as net unrecognized section 987 gain or loss of the new section 987 QBU, which could be recognized on a remittance (or termination) in subsequent taxable years. The assets and liabilities that were deemed transferred to the section 987 QBU on the transition date (including marked assets and liabilities) were translated using historic rates, increased or decreased to take into account any amount treated as net unrecognized section 987 gain or loss determined with respect to the deemed termination. The deferral transition method thus preserved the taxpayer's section 987 gain or loss computed under its prior method and adjusted the applicable exchange rates to avoid double counting.

Under the fresh start transition method, section 987 gain or loss that would have been recognized under the taxpayer's prior method as a result of the deemed termination was neither recognized nor carried forward as net unrecognized section 987 gain or loss. The assets and liabilities that were deemed transferred to the section 987 QBU on the transition date (including marked assets and liabilities) were translated using historic rates without adjustment.

The fresh start transition method was designed to prevent recognition of non-economic section 987 gain or loss that was not recognized before the transition date. Because marked assets and liabilities were translated at historic rates under the fresh start transition method, any section 987 gain or loss inherent in those assets and liabilities would be added to the pool of net unrecognized section 987 gain or loss in the taxable year beginning on the transition date. However, exchange rate fluctuations with respect to historic items would not give rise to section 987 gain or loss. In addition, section 987 gain or loss attributable to items that were no longer reflected on the section 987 QBU's balance sheet on the transition date (for example, assets that had been sold before the transition date) would never be taken into account.

Only taxpayers that were applying section 987(3) using a reasonable method before the transition date were permitted to use the deferral transition method. A taxpayer whose prior method was unreasonable, or that failed to make required determinations under section 987 in prior years, was required to use the fresh start transition method.

For this purpose, the preamble to the 2006 proposed regulations explained that the method of applying section 987 provided in the 1991 proposed regulations would be treated as a reasonable method. The preamble to the 2006 proposed regulations further stated that the use of an ''earnings only'' method would be treated as a reasonable method. Under an ''earnings only'' method, section 987 gain or loss is recognized on a distribution out of a QBU's earnings, but not on a distribution in excess of earnings (which represents a return of capital).

C. 2016 Final Regulations

On December 8, 2016, the Treasury Department and the IRS published final regulations (TD 9794) in the **Federal Register** (81 FR 88806, December 8, 2016) (the ''2016 final regulations''). The 2016 final regulations largely adopt the FEEP method contained in the 2006 proposed regulations but modify those regulations to make the FEEP method easier for the IRS to administer and for taxpayers to apply. For example, the 2016 final regulations permit taxpayers to use the yearly average exchange rate as the historic rate applicable to historic items. *See* § 1.987–3(c)(3). The 2016 final regulations also modify the computation of net unrecognized section 987 gain or loss for a taxable year by requiring adjustments for nondeductible expenses and tax-exempt income. *See* § 1.987–4(d)(7) and (8).

The 2016 final regulations maintain the aggregate approach of the 2006 proposed regulations for partnerships. However, in response to comments relating to the complexity of the aggregate approach, the 2016 final regulations apply only to partnerships that are wholly owned by related persons (''section 987 aggregate partnerships''). The preamble to the 2016 final regulations indicated that the treatment of other partnerships under section 987 would be addressed separately and such partnerships might be subject to a different approach.

The 2016 final regulations require taxpayers to transition using the fresh start transition method. *See* § 1.987–10. The Treasury Department and the IRS were concerned that an election between two transition methods (as permitted under the 2006 proposed regulations) would result in a whipsaw to the fisc, because each taxpayer could choose the method that produces more section 987 loss and less section 987 gain (as was noted by comments on the 2006 proposed regulations). The Treasury Department and the IRS were also concerned about administrative difficulties and planning opportunities associated with adjustments to the translation rate under the deferral transition method.

Section 1.987–11(a) provides that the 2016 final regulations generally apply to taxable years beginning on or after one year after the first day of the first taxable year following December 7, 2016. However, taxpayers could choose to apply them to an earlier taxable year under § 1.987–11(b).

D. 2016 Temporary and Proposed Regulations

On December 8, 2016, the Treasury Department and the IRS published Treasury Decision 9795 (the ''temporary regulations'') in the **Federal Register** (81 FR 88854, December 8, 2016) and published a notice of proposed rulemaking (81 FR 88882, December 8, 2016) (the ''2016 proposed regulations'') in the **Federal Register** by cross-reference to the temporary regulations. The temporary regulations (other than § 1.987–12T) had the same applicability date as the 2016 final regulations.

The temporary regulations and the 2016 proposed regulations include: (1) rules relating to the recognition and deferral of section 987 gain or loss in connection with certain QBU terminations and certain other transactions involving partnerships; (2) an annual deemed termination election; (3) an elective method, available to taxpayers that make the annual deemed termination election, for translating all items of income or loss with respect to a section 987 QBU at the yearly average exchange rate; (4) rules regarding the treatment of section 988 transactions of a section 987 QBU; (5) rules regarding QBUs with the U.S. dollar as their functional currency; (6) rules regarding combinations and separations of section 987 QBUs; (7) rules regarding the translation of income used to pay creditable foreign income taxes; (8) rules regarding the allocation of assets and liabilities of certain partnerships for purposes of section 987; and (9) rules requiring the deferral of certain section 988 loss that arises with respect to related-party loans.

Under the annual deemed termination election provided in the temporary regulations, a taxpayer could elect to deem all of its section 987 QBUs to terminate on the last day of each taxable year, resulting in the recognition of all net unrecognized section 987 gain or loss on an annual basis. *See* § 1.987–8T(d). The assets and liabilities of a section 987 QBU subject to the election were deemed to be distributed to the owner pursuant to the deemed termination on the last day of each taxable year and recontributed on the first day of the following taxable year. The temporary regulations further provided that a taxpayer who made an annual deemed termination election could elect to translate all items of section 987 taxable income or loss at the yearly average exchange rate. *See* § 1.987–3T(d).

The temporary regulations (other than those finalized or withdrawn in 2019, as described in part II.E of this Background section) expired on December 6, 2019. The Treasury Department and the IRS intend to remove the temporary regulations from the **Federal Register** when the proposed regulations are finalized.

The following parts of the 2016 proposed regulations remain outstanding: (1) rules regarding the treatment of section 988 transactions of a section 987 QBU (*see* §§ 1.987–1, 1.987–3, and 1.988–1 of the 2016 proposed regulations); (2) rules regarding QBUs with the U.S. dollar as their functional currency (*see* §§ 1.987–1 and 1.987–6 of the 2016 proposed regulations); (3) rules regarding the translation of income used to pay creditable foreign income taxes (*see* § 1.987–3 of the 2016 proposed regulations); and (4) rules requiring the deferral of certain section 988 loss that arises with respect to related-party loans (*see* § 1.988–2 of the 2016 proposed regulations). A notice reopening the comment period for the parts of the 2016 proposed regulations that remain outstanding is published in this issue of the **Federal Register**.

E. 2019 Final Regulations

On May 13, 2019, the Treasury Department and the IRS published Treasury Decision 9857 (84 FR 20790, May 13, 2019) (the ''2019 final regulations'' and, collectively with the 2016 final regulations, the ''final regulations'') in the **Federal Register**. The 2019 final regulations finalized parts of the 2016 proposed regulations relating to combinations and separations of section 987 QBUs and the recognition and deferral of section 987 gain or loss in connection with certain QBU terminations and certain other transactions involving partnerships. The 2019 final regulations also withdrew

§ 1.987–7T of the temporary regulations, relating to the allocation of assets and liabilities of a section 987 aggregate partnership to its partners for purposes of section 987, in response to comments noting that these rules could cause distortions in the computation of section 987 gain or loss. The 2019 final regulations (other than § 1.987–12) have the same applicability date as the 2016 final regulations.

III. Executive Order 13789 and Interim Report to the President

Executive Order 13789, issued on April 21, 2017, instructs the Secretary of the Treasury (the ''Secretary'') to review all significant tax regulations issued on or after January 1, 2016, and to take action to mitigate the burden of regulations that, in relevant part, impose an undue financial burden on U.S. taxpayers or add undue complexity to the Federal tax laws. The Executive order further instructs the Secretary to submit two reports to the President: an interim report that identifies regulations that meet the criteria described in the Executive order; and a report that recommends specific actions to mitigate the burden imposed by regulations identified in the interim report.

In an interim report to the President dated June 22, 2017, the Treasury Department identified eight regulations, including the 2016 final regulations, as meeting at least one of the criteria described in the Executive order. In Notice 2017–38, 2017–30 I.R.B. 147, which was published on July 24, 2017, the Treasury Department and the IRS requested comments on whether the regulations identified in the interim report (including the 2016 final regulations) should be rescinded or modified and, if not rescinded, how the regulations should be modified to reduce the burden and complexity.

The Treasury Department and the IRS received several comments in response to Notice 2017–38. In addition, one comment was submitted in response to Notice 2017–57, 2017–42 I.R.B. 325 (which was the first of the deferral notices described in part V of this Background section). The comments that are relevant to the proposed regulations are discussed in the Explanation of Provisions.

IV. Second Report to the President on Identifying and Reducing Tax Regulatory Burdens

On October 16, 2017, the Secretary published a report (the ''Report'') in the **Federal Register** (82 FR 48013, October 16, 2017) recommending specific actions to mitigate the burden imposed by the regulations identified in the interim report. The Report stated that the Treasury Department and the IRS intend to propose modifications to the 2016 final regulations and to issue guidance permitting taxpayers to elect to defer the application of §§ 1.987–1 through 1.987–10.

In particular, the Report stated that, in response to comments, the Treasury Department and the IRS intend to propose rules that would permit taxpayers to elect to adopt a simplified method of calculating section 987 gain or loss and translating section 987 taxable income or loss, subject to certain limitations on the recognition of section 987 loss. One simplified method discussed in the Report would allow a taxpayer to treat all assets and liabilities of a section 987 QBU as marked items and to translate all items of income and expense at the average exchange rate for the taxable year. Under this method, the amount of section 987 gain or loss would generally be consistent with the amount determined under the 1991 proposed regulations and would more closely conform to the applicable financial accounting rules.

The Report also noted that the Treasury Department and the IRS were considering limitations on the recognition of section 987 loss that would apply to taxpayers using the simplified method. Two potential limitations were mentioned in the Report: (1) a rule that would allow the electing taxpayer to recognize net section 987 loss only to the extent of net section 987 gain recognized in prior or subsequent years; and (2) a rule that would defer the recognition of all section 987 gain or loss until the earlier of (i) the year that the trade or business conducted by the section 987 QBU ceases to be performed by any member of its controlled group or (ii) the year that substantially all of the assets and activities of the QBU are transferred outside of the controlled group.

Finally, the Report stated that the Treasury Department and the IRS were considering alternative transition rules. One alternative would allow taxpayers to carry forward unrealized section 987 gains and losses (measured on the transition date with appropriate adjustments), and a second alternative would allow taxpayers to translate all items of the section 987 QBU at the spot rate on the transition date without carrying forward any unrecognized section 987 gain or loss.

V. Deferral Notices

The Treasury Department and the IRS have issued several notices stating that future guidance would defer the applicability dates of the 2016 final regulations, §§ 1.987–2(c)(9) and 1.987–4(c)(2) and (f) of the 2019 final regulations (the ''related 2019 final regulations''), and §§ 1.987–1T (other than §§ 1.987–1T(g)(2)(i)(B) and (g)(3)(i)(H)) through 1.987–4T, 1.987–6T, 1.987–7T, 1.988–1T, and 1.988–2T(i) of the temporary regulations. Most recently, on August 22, 2022, Notice 2022–34, 2022–34 I.R.B. 150, announced that future guidance would defer the applicability date of the 2016 final regulations and the related 2019 final regulations by one additional year to taxable years beginning after December 7, 2023. Thus, following the amendments described in that Notice, the 2016 final regulations and the related 2019 final regulations would first apply to the taxable year beginning on January 1, 2024, for calendar year taxpayers. The applicability date of § 1.987–12 would not be affected by these amendments.

VI. Financial Accounting Rules

The rules of the final regulations under section 987 differ from the U.S. generally accepted accounting principles (''U.S. GAAP'') relating to foreign currency translation gain or loss.[1] For financial accounting purposes, the consolidated financial statements of a reporting entity may include operations denominated or measured in currencies other than the reporting currency (each such operation, a foreign entity),[2] resulting in the need to translate those operations into the reporting currency of the reporting entity. FASB, 2023, ASC par. 830–10–10–1. The assets and liabilities and other elements, such as revenues and expenses, of the financial statements of a foreign entity are translated to the reporting currency using a current exchange rate. FASB, 2023, ASC pars. 830–30–45–3 through 830–30–45–5. For example, assets and liabilities of the foreign entity are translated into the reporting currency using the spot rate on the balance sheet date. Translation adjustments resulting from the process of translating a foreign entity's financial statements to the reporting currency are not included in determining net income

[1] The relevant U.S. GAAP financial accounting rules are contained in Financial Accounting Standards Board (''FASB''), Accounting Standards Codification (''ASC''), Foreign Currency Matters, Topic 830 (formerly known as FASB Statement No. 52, Foreign Currency Translation).

[2] A foreign entity is an operation, including a subsidiary, division, and branch, whose financial statements are both (a) prepared in a currency other than the reporting currency of the reporting entity, and (b) combined or consolidated with or accounted for on the equity basis in the financial statements of the reporting entity. FASB, 2023, ASC sec. 830–10–20.

but are reported in the cumulative translation adjustment (CTA), which is part of other comprehensive income, included in the in the equity section of the reporting entity's consolidated balance sheet. FASB, 2023, ASC par. 830–30–45–12. Upon the sale or liquidation of the investment in the foreign entity, the CTA attributable to that foreign entity is removed from equity and is reported as part of the gain or loss on the sale or liquidation of the investment. FASB, 2023, ASC par. 830–30–40–1.

The treatment of translation gain or loss under FASB, ASC Topic 830, under which translation gain or loss is deferred until a sale or liquidation, differs from the requirements of section 987(3), under which a taxpayer is required to make proper adjustments for the transfer of property between QBUs of a taxpayer by including section 987 gain or loss in income upon a remittance. Further, in contrast to the translation adjustments in the financial accounting rules, which apply to all assets and liabilities of a foreign entity, the FEEP method imputes section 987 gain or loss only to marked items of a section 987 QBU and requires the basis of historic assets to be translated at historic rates for purposes of computing section 987 taxable income or loss.

Explanation of Provisions

The proposed regulations retain the basic approach and structure of the final regulations, while adopting a number of the simplifications discussed in the Report and providing additional guidance regarding the determination of section 987 taxable income or loss and section 987 gain or loss.

I. FEEP Method

As explained in parts II.B and II.C of the Background section, the final regulations provide that section 987 gain or loss and section 987 taxable income or loss are determined under the FEEP method. This method uses a balance sheet approach to determine section 987 gain or loss. In addition, historic items are translated at historic rates (both for purposes of determining section 987 gain or loss and for purposes of translating recovery of basis with respect to historic assets in computing section 987 taxable income or loss). As a result, the FEEP method does not impute section 987 gain or loss to historic items, for which exchange rate changes have only an uncertain or remote effect on value that is more appropriately recognized upon a realization event.

Several comments asserted that the FEEP method is overly complex and presents significant compliance burdens, primarily related to the treatment of historic items. Comments stated that, because the requirement to use historic rates to translate historic items diverges from financial accounting rules, taxpayers would need to keep a separate set of books with respect to each section 987 QBU and to develop costly reporting systems to maintain information that is not used for any other purpose.

Comments recommended that, to reduce the complexity and administrative burden of the final regulations, taxpayers should be permitted to apply a method similar to that provided in the 1991 proposed regulations. Comments noted that this method could be coupled with rules to prevent the selective recognition of section 987 losses, as discussed in part III of this Explanation of Provisions.

The proposed regulations retain the FEEP method of the 2016 final regulations, with modifications discussed in this Explanation of Provisions, as the default rule for determining section 987 taxable income or loss and net unrecognized section 987 gain and loss. *See* proposed §§ 1.987–3 and 1.987–4. The FEEP method is an appropriate default rule because it generally provides a more precise measure of section 987 gain or loss. Moreover, the enactment of the Tax Cuts and Jobs Act, Public Law 115–97, 131 Stat. 2054 (2017), on December 22, 2017, has made it even more important to accurately calculate taxable income with respect to a section 987 QBU. For example, section 951A, relating to global intangible low-taxed income (''GILTI''), has significantly expanded the scope of taxable income of a controlled foreign corporation (''CFC'') that is subject to current U.S. taxation.[3]

In addition, because the 2016 final regulations permit the yearly average exchange rate to be used as the historic rate, a taxpayer that knows the year in which an asset was acquired or placed in service can determine the applicable historic rate based on publicly available information. Information relating to the year in which an asset was acquired or placed in service is often tracked for other reasons, including for purposes of computing depreciation and amortization. For example, in computing a CFC's qualified business asset investment, section 951A(d)(3)(A) now requires the adjusted basis of assets to be determined using the alternative depreciation system under section 168(g).

However, the Treasury Department and the IRS acknowledge that in some cases it may be burdensome to translate the basis of each historic asset using a different historic rate (including for purposes of depreciation) in determining section 987 taxable income or loss. Accordingly, as described in parts II and IV of this Explanation of Provisions, the proposed regulations provide several simplifying elections that permit section 987 to be applied in a way that more closely conforms to the financial accounting rules and reduces the compliance burden. Taxpayers who make these elections would still compute section 987 gain or loss by reference to the year-end balance sheet of the section 987 QBU (though the computation would be modified, as described in part V of this Explanation of Provisions). The proposed regulations do not include an election to use the method prescribed in the 1991 proposed regulations, because the use of fundamentally different computational methods by different taxpayers (or by the same taxpayer in different years) would increase the complexity of the section 987 regulations and make them more difficult to administer.

II. Current Rate Election

As discussed in part I of this Explanation of Provisions section, comments noted that the compliance burden associated with the FEEP method relates primarily to the treatment of historic items. Under the 2016 final regulations, taxpayers are required to track the historic rate for historic items and to use the historic rate for purposes of computing section 987 taxable income or loss and section 987 gain or loss.

To alleviate this compliance burden, proposed § 1.987–1(d)(2) would provide an election to treat all items that are properly reflected on the books and records of a section 987 QBU as marked items (the ''current rate election''). If a current rate election applies, all items of income, gain, deduction, and loss with respect to a section 987 QBU would be translated at the yearly average exchange rate for the current taxable year for purposes of computing section 987 taxable income or loss. *See* proposed § 1.987–3(c)(2). In addition, all items of a section 987 QBU would be translated at the year-end spot rate for purposes of computing section 987 gain or loss.

The current rate election is expected to produce an amount of section 987

[3] Previously, section 987 gain or loss recognized by a CFC generally would be taken into account in determining a U.S. shareholder's taxable income only if a portion of the section 987 gain or loss affected the calculation of subpart F income or when the earnings of the CFC were relevant, such as on a distribution or sale.

gain or loss and section 987 taxable income or loss that is similar to the amounts determined under the 1991 proposed regulations. If a current rate election is made, all assets and liabilities of a section 987 QBU would generate section 987 gain or loss, in conformity with the approach used for financial reporting purposes and the 1991 proposed regulations.

In general, a current rate election would increase the pool of net unrecognized section 987 gain or loss with respect to a section 987 QBU (relative to the pool that would be determined without the current rate election). In addition, under a current rate election amounts in the pool may substantially exceed any economic gain or loss attributable to currency fluctuations. The Treasury Department and the IRS are concerned that without appropriate limitation, the current rate election would facilitate the abuses and inappropriate outcomes that occurred under the 1991 proposed regulations, including the potential for taxpayers to choose to recognize significant, and potentially uneconomic, section 987 losses while avoiding or deferring section 987 gains. Accordingly, the proposed regulations include a rule that would suspend the recognition of section 987 loss when a current rate election is in effect. See part III of this Explanation of Provisions.

III. Suspension of Section 987 Loss Under a Current Rate Election

Comments discussed several options for addressing the potential for selective recognition of section 987 losses. First, comments asserted that certain rules provided in the 2016 final regulations (for example, the annual netting of contributions and distributions to determine the amount of a remittance under § 1.987–5(c)) would be sufficient to prevent abuse. Alternatively, comments recommended that the recognition of section 987 gain or loss be deferred until a QBU is terminated or its assets are sold to an unrelated party, consistent with the financial accounting rules. Comments also suggested that section 987 loss could be deferred until the owner recognizes an equal or greater amount of section 987 gain from the same QBU. Finally, some comments proposed a ‘‘lookback’’ approach, under which section 987 loss would be deferred only to the extent that the loss exceeded section 987 gain previously recognized with respect to the same section 987 QBU.

The Treasury Department and the IRS are concerned that, notwithstanding the annual netting rule of § 1.987–5(c) and the other rules provided in the 2016 final regulations, taxpayers generally have a significant degree of control over whether and when their section 987 QBUs make remittances and, therefore, could still selectively recognize section 987 losses. In addition, because taxpayers that make a current rate election are expected to have substantial pools of net unrecognized section 987 gain or loss, special rules are needed to prevent the selective recognition of losses.

Accordingly, if a current rate election is in effect, the proposed regulations generally would suspend the recognition of section 987 loss until a taxable year in which an equal or greater amount of section 987 gain is recognized (as described in part III.A of this Explanation of Provisions) or until the occurrence of certain recognition events (as described in part III.B of this Explanation of Provisions).

A. General Rules Relating to Suspended Section 987 Loss

1. In General

In a taxable year in which a current rate election applies, any section 987 loss that would otherwise be recognized as a result of a remittance (including a deemed remittance resulting from the termination of a section 987 QBU) is treated as suspended section 987 loss. Proposed § 1.987–11(c). In general, an owner of a section 987 QBU would recognize suspended section 987 loss in a taxable year in which the owner recognizes section 987 gain that has the same source and character as the suspended section 987 loss (the ‘‘loss-to-the-extent-of-gain rule’’). Proposed § 1.987–11(e). Whether section 987 gain has the same source and character as suspended section 987 loss would be determined on the basis of the initial assignment in proposed § 1.987–6(b)(2)(i). *See* proposed § 1.987–11(e)(1) and (f).

The Treasury Department and the IRS considered applying the loss-to-the-extent-of-gain rule at the QBU level, such that suspended section 987 loss with respect to a section 987 QBU would be recognized only to the extent of section 987 gain recognized with respect to the same section 987 QBU (as was recommended by some comments). However, the Treasury Department and the IRS were concerned that a QBU-level limitation would be overly restrictive. Moreover, if an owner has suspended section 987 loss with respect to one QBU, the concern of selective loss recognition may be mitigated to the extent that the same owner recognizes section 987 gain with respect to another QBU.

Therefore, under the proposed regulations, the loss-to-the-extent-of-gain rule applies at the owner level. An owner of a section 987 QBU recognizes suspended section 987 loss to the extent that it recognizes section 987 gain, regardless of which QBU generates the gain. However, because this rule applies at the owner level, the Treasury Department and the IRS were concerned that an owner might trigger the recognition of section 987 gain that is not subject to residual U.S. tax (or is taxed at a low rate) to release suspended section 987 loss of a different source or character. Accordingly, proposed § 1.987–11(e)(1) provides that an owner does not recognize suspended section 987 loss until it recognizes section 987 gain in the same recognition grouping as the suspended section 987 loss.

In general, section 987 gain and suspended section 987 loss are in the same recognition grouping if they are both initially assigned to U.S. source income or to foreign source income in the same section 904 category. Proposed § 1.987–11(f)(1). In addition, if the owner of a section 987 QBU is a CFC, in order to be in the same recognition grouping, section 987 gain and suspended section 987 loss must both be initially assigned to the same statutory and residual grouping of subpart F income, tentative tested income, income described in section 952(b) (certain income that is effectively connected with the conduct of a trade or business within the United States (‘‘ECI’’) and excluded from subpart F income), or other income.[4] Proposed § 1.987–11(f)(2).

Suspended section 987 loss that is not recognized in a taxable year is recognized in the next taxable year in which (and to the extent that) the owner recognizes section 987 gain in the same recognition grouping. The Treasury Department and the IRS also considered a lookback rule, under which suspended section 987 loss could be recognized to the extent that section 987 gain was recognized in a prior taxable year. However, a lookback rule would permit taxpayers to selectively trigger section 987 gain in taxable years in which such gain would not give rise to additional U.S. tax (for example, because the gain is offset by losses or because the additional U.S. tax is offset with foreign tax credits). In light of these concerns, the Treasury Department and the IRS request comments regarding, if a lookback rule were to be adopted, how to prevent section 987 gain that has no

[4] See part VI of this Explanation of Provisions (requesting comments concerning the treatment of section 987 gain or loss as ECI).

net effect on U.S. tax from releasing suspended section 987 loss that reduces U.S. tax.

2. Suspension of Section 987 Loss When an Annual Recognition Election Is Made

In general, a taxpayer who makes an annual recognition election will recognize the full amount of net unrecognized section 987 gain or loss that is added to the pool each year. If an annual recognition election and a current rate election are both in effect for a taxable year, section 987 loss generally would not be suspended under proposed § 1.987–11(c). See part IV of this Explanation of Provisions.

The Treasury Department and the IRS are concerned that taxpayers who are subject to a current rate election might seek to avoid the application of the loss-to-the-extent-of-gain rule by making an annual recognition election after net unrecognized section 987 loss has accrued. Similarly, the Treasury Department and the IRS are concerned that taxpayers that have not made a current rate election, but which have substantial pools of net unrecognized section 987 loss, might make an annual recognition election to recognize the loss without the need for a remittance. Accordingly, the proposed regulations would treat any net accumulated unrecognized section 987 loss and deferred section 987 loss as suspended section 987 loss in the first year in which an annual recognition election takes effect if either (1) a current rate election was in effect in the previous year or (2) the owner had more than $5 million of net section 987 losses. Proposed § 1.987–11(d).

3. Recognition of Suspended Section 987 Loss When an Annual Recognition Election Is in Effect

The proposed regulations also contain a special rule relating to the recognition of suspended section 987 loss when a current rate election and an annual recognition election are both in effect. The Treasury Department and the IRS are concerned that, absent a modification to the general loss-to-the-extent-of-gain rule in proposed § 1.987–11(e)(1), taxpayers that have suspended section 987 loss would get an unwarranted benefit from making an annual recognition election. Specifically, absent a modification, these taxpayers would be able to recognize suspended section 987 loss even if they had net losses on a cumulative basis for the taxable years to which the annual recognition election applied.

For example, assume that an owner of a section 987 QBU has suspended section 987 loss of $400 that arose in prior years (for example, under a current rate election). The owner's functional currency is the U.S. dollar, and the section 987 QBU's functional currency is the euro. In year 1, the owner makes an annual recognition election. The euro weakens in year 1 and partially recovers in year 2. As a result of the annual recognition election, the owner recognizes section 987 loss of $200 in year 1 and recognizes section 987 gain of $150 in year 2. Under the general loss-to-the-extent-of-gain rule in § 1.987–11(e)(1), even though the owner recognized net section 987 loss of $50 on a cumulative basis (over years 1 and 2), the owner would recognize suspended section 987 loss equal to the section 987 gain in the same recognition grouping that it recognizes in year 2. Assuming all of the section 987 gain or loss is in the same recognition grouping, the owner would recognize $350 of total section 987 loss (equal to $200 of section 987 loss recognized under the annual recognition election in year 1 and $150 of suspended section 987 loss recognized under the loss-to-the-extent-of-gain rule in year 2), even though it recognizes only $150 of section 987 gain.

Accordingly, if a taxpayer makes both an annual recognition election and a current rate election, the loss-to-the-extent-of-gain rule would apply by reference to the net cumulative amount of section 987 gain in each recognition grouping that is recognized by the taxpayer during the relevant testing period (rather than the gross amount recognized each taxable year). Proposed § 1.987–11(e)(2). The testing period generally is the period in which section 987 loss is suspended and both a current rate election and an annual recognition election are in effect. Proposed § 1.987–11(e)(2)(iii). The Treasury Department and the IRS request comments on whether any modifications to the limitation in proposed § 1.987–11(e)(2) would allow for simplification while preventing inappropriate outcomes.

B. Suspended Section 987 Loss Recognized or Attributed to a Successor on Termination

The proposed regulations provide a successor rule that applies when a section 987 QBU with suspended section 987 loss terminates. Under the successor rule, suspended section 987 loss is not recognized in the taxable year of termination, but instead becomes attributable to a successor suspended loss QBU.

For this purpose, an eligible QBU is treated as a successor of a section 987 QBU if it holds a significant portion of the assets of the section 987 QBU following its termination, is engaged in the same trade or business, and is owned by the owner of the section 987 QBU or a member of the owner's controlled group. Proposed § 1.987–13(b)(1). For this purpose, any eligible QBU may qualify as a successor, whether or not it is a section 987 QBU (that is, whether or not it has a different functional currency than its owner). Thus, for example, if an owner of a section 987 QBU with suspended section 987 loss contributes the assets of the section 987 QBU to a subsidiary where they are held by an eligible QBU of the subsidiary that uses them in the same trade or business (the ''subsidiary QBU''), the subsidiary QBU is a successor suspended loss QBU even if it is not a section 987 QBU. Similar principles apply when a successor terminates. Proposed § 1.987–13(c)(1).

If a section 987 QBU (or its successor) terminates without a successor, the original owner of the section 987 QBU recognizes all of its suspended section 987 loss with respect to the section 987 QBU (or its successor). Proposed § 1.987–13(b)(2) and (c)(2). Therefore, an owner generally would recognize suspended section 987 loss when it transfers the section 987 QBU's assets to an unrelated party or the section 987 QBU ceases its trade or business (such that there is no successor suspended loss QBU). These events are similar to the events that result in a release of the CTA for financial reporting purposes. Moreover, the Treasury Department and the IRS expect that taxpayers would be less likely to sell or wind up the trade or business of a section 987 QBU for the purpose of selectively recognizing section 987 losses and, accordingly, there is less of a need for continued suspension of section 987 loss after these events occur.

In addition, suspended section 987 loss is recognized if the owner of the successor ceases to be related to the original owner of the suspended loss QBU due to a direct or indirect transfer of interests in the owner of the successor. Proposed § 1.987–13(d). If the owner of a successor suspended loss QBU ceases to be related to the original owner of the section 987 QBU for a different reason (for example, due to a transfer of interests in the original owner of the suspended loss QBU), the successor suspended loss QBU is no longer treated as a successor, and suspended section 987 loss can no longer be recognized in connection with a termination (though it can still be recognized under the loss-to-the-extent-of-gain rule). Proposed § 1.987–13(e).

This rule is intended to prevent taxpayers from transferring the stock of the original owner out of its controlled group for the purpose of selectively recognizing suspended section 987 loss, while leaving behind the assets and activities of the section 987 QBU in the hands of a different controlled group member.

Similarly, suspended section 987 loss is not recognized when the owner of a section 987 QBU liquidates in a transaction described in section 331. Proposed § 1.987–13(f). Instead, suspended section 987 loss that is not recognized in the taxable year of the liquidation is eliminated and will never be recognized. This rule is intended to prevent taxpayers from entering into section 331 transactions in order to trigger the recognition of suspended section 987 loss. For example, a U.S. shareholder could cause an upper-tier CFC that owns a section 987 QBU with suspended section 987 loss to transfer all of its assets and liabilities to a lower-tier CFC in a section 351 contribution, and then cause the upper-tier CFC to liquidate in a transaction described in section 331 in order to recognize the suspended loss. The Treasury Department and the IRS are aware that similar transactions have been used to claim large section 987 losses under current law.

In the case of a combination or separation, the suspended section 987 loss of a combined or separated QBU is determined under rules similar to those applicable to net accumulated unrecognized section 987 gain or loss under proposed § 1.987–4(f). Proposed § 1.987–11(b)(2) and (3). Therefore, the suspended section 987 loss of a separating QBU is allocated to the separated QBUs in proportion to the assets properly reflected on the books and records of each separated QBU after the separation. Proposed § 1.987–11(b)(3)

C. Special Rule for Inbound Liquidations and Reorganizations

Under the proposed regulations, if a foreign corporation liquidates or merges into a domestic corporation in a section 381(a) transaction, the domestic corporation does not succeed to or take into account any unused suspended section 987 loss of the foreign corporation. Proposed § 1.987–13(g). This rule is intended to prevent the importation of suspended section 987 loss that was generated offshore. Due to differences in how income of a CFC is taxed to its U.S. shareholders, these losses may relate to income subject to tax at a significantly reduced effective rate. For example, a suspended section 987 loss that is allocated and apportioned to the other income grouping under proposed § 1.987–6 may effectively reduce only earnings that would typically not be subject to current U.S. tax, and which may be eligible for a dividends received deduction under section 245A upon distribution. As a result, depending on the particular facts, such losses may have little or no impact on the U.S. tax liability of a CFC's U.S. shareholder when they are recognized and are generally not equivalent to the section 987 gains or losses typical of a domestic corporation.

Furthermore, even if the domestic corporation could, in theory, succeed to the suspended section 987 loss, the loss may have been assigned to an income group, such as the tested income group, that is not relevant to a domestic corporation, in which case, it would be highly unlikely that the suspended section 987 loss could ever be used (absent a subsequent outbound asset transfer by the domestic corporation to a foreign successor) under the loss-to-the-extent-of-gain rule because the domestic corporation would not recognize section 987 gain in the same recognition grouping.

D. Rejection of Financial Accounting Deferral Rule

The Treasury Department and the IRS also considered a rule that would defer the recognition of all section 987 gain and loss of a section 987 QBU until a taxable year in which the section 987 QBU's trade or business ceases to be performed by any member of the controlled group or substantially all of the assets and activities of the QBU are transferred outside of the controlled group. This approach would more closely parallel the rules for determining when the CTA is released for financial accounting purposes.

However, the loss limitation rule provided in the proposed regulations is more consistent with the statutory provisions of section 987(3), which contemplates the recognition of section 987 gain or loss at the time of a remittance, and section 989(c)(2), which authorizes regulations limiting the recognition of foreign currency loss on certain remittances. Moreover, the Treasury Department and the IRS are concerned that a rule that defers the recognition of all section 987 gain or loss may be difficult to administer. For example, as a practical matter, taxpayers might not properly track section 987 gain or loss on an annual basis if it is not expected to be recognized in the foreseeable future and the sale or liquidation of a section 987 QBU might occur many years after the accrual of section 987 gain or loss (at which time the necessary records may no longer be available).

IV. Annual Recognition Election

A. Annual Deemed Termination Election Provided in the 2016 Temporary and Proposed Regulations

As explained in part II.D of the Background section, the 2016 temporary and proposed regulations contained an annual deemed termination election. Under this election, a section 987 QBU would be deemed to terminate on the last day of each taxable year, resulting in the remittance of all the gross assets of the section 987 QBU to its owner and the recognition of all net unrecognized section 987 gain or loss on an annual basis. *See* §§ 1.987–8T(d) and 1.987–8(e). The assets and liabilities of a section 987 QBU subject to the election would then be deemed to be contributed to the section 987 QBU on the first day of the following taxable year. *See* § 1.987–8T(d).

A comment asserted that it was difficult to apply the rules under the annual deemed termination election. If the election was made, a section 987 QBU's historic assets and the amount of its historic liabilities would be translated at the end of each year into the owner's functional currency using historic rates (due to the deemed termination and remittance); the historic rate would generally be the yearly average exchange rate for the year of the deemed termination. The assets and liabilities would then be retranslated into the section 987 QBU's functional currency at the beginning of the following taxable year at the yearly average exchange rate for the following taxable year (due to the deemed contribution). *See* §§ 1.987–2(d)(2) and 1.987–5(f)(3). As a result, the basis of a section 987 QBU's assets and the amount of its liabilities (determined in the section 987 QBU's functional currency) generally would change from one year to the next, which would increase the compliance burden of applying the section 987 regulations.

B. Annual Recognition Election Provided in the Proposed Regulations

The proposed regulations would replace the annual deemed termination election with an annual recognition election. Like the annual deemed termination election, an owner that makes the annual recognition election would recognize the full amount of net unrecognized section 987 gain or loss each year. However, the proposed annual recognition election does not result in a deemed termination of a section 987 QBU and a deemed remittance of its assets or a deemed contribution to the section 987 QBU. Instead, the owner of a section 987 QBU simply recognizes the full amount of its net unrecognized section 987 gain or loss on an annual basis. Therefore, the annual recognition election would not alter the functional currency basis of a section 987 QBU's assets, the amount of its liabilities, or their historic exchange rates.

C. Special Rules That Apply When a Current Rate Election and an Annual Recognition Election Are Both in Effect

The annual recognition election is available to owners whether or not they make a current rate election. If an owner makes both an annual recognition election and a current rate election for a taxable year, the loss suspension rule described in part III of this Explanation of Provisions does not apply to net unrecognized section 987 loss accrued while the election is in effect. Because the annual recognition election requires both gains and losses to be recognized without regard to whether a remittance occurs, selective recognition of losses is not possible and, accordingly, a loss limitation should not be needed. However, see part III.A.3 of this Explanation of Provisions regarding the application of the loss-to-the-extent-of-gain rule when an annual recognition election is in effect.

D. Translation of Taxable Income Under an Annual Recognition Election When a Current Rate Election Is Not in Effect

If an owner of a section 987 QBU makes an annual recognition election, but does not make a current rate election, section 987 taxable income or loss is determined by translating all items at the yearly average exchange rate. Unlike under the 2016 temporary and proposed regulations, this rule is mandatory (rather than elective). Use of the yearly average exchange rate simplifies the determination of section 987 taxable income or loss without sacrificing accuracy and is consistent with financial accounting principles. Therefore, an election to use historic rates for this purpose should not be needed.

E. Consequences of Making an Annual Recognition Election if a Current Rate Election Is Not in Effect

As described in part IV.D of this Explanation of Provisions, if an owner of a section 987 QBU makes an annual recognition election, and does not make a current rate election, the owner would use the yearly average exchange rate for purposes of determining section 987 taxable income or loss. However, the owner would use historic rates to translate historic items for purposes of determining section 987 gain or loss. Thus, the same historic item would be translated at different exchange rates for different purposes. Under the mechanics of the FEEP method, if a historic asset is sold or depreciated during the taxable year, the difference between the historic rate basis and the current year average rate basis would be added to the pool of unrecognized section 987 gain or loss (and recognized pursuant to the annual recognition election).

The effect of these rules is that—with respect to historic assets of a section 987 QBU—an owner that does not make a current rate election would recognize the same total amount of taxable income each year regardless of whether it makes an annual recognition election. For example, assume a section 987 QBU has the euro as its functional currency, and its owner is a calendar year taxpayer with the U.S. dollar as its functional currency. At the end of year 1, the section 987 QBU owns a non-depreciable historic asset (Asset A) with a basis of 100 euros, and the historic rate for Asset A is €1=$1. The yearly average exchange rate in year 2 and the spot rate on December 31, year 2 is €1=$2. In year 2, the section 987 QBU sells Asset A for 150 euros and holds the 150 euros on its balance sheet until the end of year 2.

If the owner does not make an annual recognition election, the owner will have section 987 taxable income of $200 for year 2. This reflects the excess of the amount realized (150 euros, translated at the yearly average exchange rate of €1=$2 into $300) over the basis of Asset A (100 euros, translated at the historic rate of €1=$1 into $100). The owner will have no unrecognized section 987 gain or loss for the taxable year under § 1.987–4(d). A comparison of the year 2 and year 1 year-end balance sheets under § 1.987–4(d)(1) will reflect an increase of $200 (the excess of 150 euros held at the end of year 2, translated at the year 2 year-end spot rate of €1=$2 into $300, over the €100 basis of Asset A, which was held at the end of year 1, translated at the historic rate of €1=$1 into $100). However, this increase is fully offset by the negative adjustment for taxable income of $200 under § 1.987–4(d)(6).

By contrast, if the owner makes an annual recognition election, the owner will have section 987 taxable income in year 2 of only $100 (50 euros of taxable income, translated at the yearly average exchange rate of €1=$2). The owner will also have unrecognized section 987 gain for the taxable year of $100 under § 1.987–4(d), which reflects the balance sheet increase of $200 (computed under § 1.987–4(d)(1) as described in the preceding paragraph) reduced by the negative adjustment for taxable income of $100. Thus, the difference between Asset A's basis translated at the yearly average exchange rate (which is $200) and its basis translated at the historic rate (which is $100) is added to the pool of unrecognized section 987 gain or loss and this amount is recognized in year 2 due to the annual recognition election.

The example illustrates that, whether or not the annual recognition election is made, the owner recognizes the same amount of total income with respect to Asset A (that is, $200). However, the annual recognition election has the effect of converting a portion of the owner's income into section 987 gain or loss. Because section 987 gain or loss is subject to special source and character rules under proposed § 1.987–6, the annual recognition election can change the source and character of an owner's taxable income.

F. Impact of an Annual Recognition Election on the Timing of Recognition With Respect to Marked and Historic Items

Under an annual recognition election, section 987 gain or loss with respect to marked items would be recognized annually (whereas, in the absence of an annual recognition election, section 987 gain or loss would be deferred until the section 987 QBU makes a remittance). Therefore, with respect to marked items, an annual recognition election would accelerate the recognition of section 987 gain or loss. If a current rate election is in effect, all items of the section 987 QBU will be treated as marked items generating section 987 gain or loss; this gain or loss would be accelerated if an annual recognition election is made.

However, if a current rate election is not in effect, the annual recognition election would not accelerate the recognition of income with respect to historic assets. As explained in part IV.E of this Explanation of Provisions, in the absence of a current rate election, the owner of a section 987 QBU recognizes the same amount of total income with respect to historic assets whether or not an annual recognition election is in effect (though the annual recognition election has the effect of changing the portion of the income that is section 987 gain or loss and the portion that is section 987 taxable income or loss). In addition, as explained in part IV.D of this Explanation of Provisions, an annual recognition election is expected to simplify the computation of section

987 taxable income or loss (because all items would be translated at the yearly average exchange rate). Therefore, for section 987 QBUs that do not have a significant amount of marked assets or liabilities, the election is expected to reduce the compliance burden on taxpayers without materially accelerating the recognition of income.

V. Changes to the Computation of Unrecognized Section 987 Gain or Loss for a Taxable Year

The proposed regulations contain several changes to the computation of unrecognized section 987 gain or loss for a taxable year under § 1.987–4(d) (that is, the amount added to the pool of net unrecognized section 987 gain or loss each year).[5] These modifications are intended to ensure that section 987 gain or loss is attributable only to exchange rate fluctuations. For example, the proposed regulations would modify the adjustments for tax-exempt income and non-deductible expenses to cover all items of income, gain, deduction, or loss that affect the section 987 QBU's balance sheet but are not taken into account in determining section 987 taxable income or loss for the taxable year. Proposed § 1.987–4(d)(7) and (8). The proposed regulations would also require an adjustment for items of income, gain, deduction, or loss that are taken into account in determining section 987 taxable income or loss but do not affect the section 987 QBU's balance sheet for the taxable year. Proposed § 1.987–4(d)(9).

Thus, the proposed regulations would account for deferred items that are expected to be taken into account in computing taxable income in a subsequent year by taking them into account in the year in which they impact the section 987 QBU's balance sheet and effectively backing them out in the future year when they impact taxable income but do not change the balance sheet. For example, if a section 987 QBU incurs an expense in year 1, but the deduction associated with the expense is deferred until year 5, proposed § 1.987–4(d)(7) would treat the expense as a non-deductible expense in year 1, increasing the year 1 unrecognized section 987 gain or loss. In year 5, the deduction would have no net effect on unrecognized section 987 gain or loss, since the deduction would result in a positive adjustment under proposed § 1.987–4(d)(6) (because the deduction reduces taxable income, and taxable income is a negative adjustment to unrecognized section 987 gain or loss), and an offsetting negative adjustment under proposed § 1.987–4(d)(9) (since the deduction represents a taxable deduction that does not affect the balance sheet). As a result, the expense would impact the calculation of section 987 gain or loss in the same manner as if it had been deductible in year 1.

In addition, the proposed regulations require an adjustment to unrecognized section 987 gain or loss for any residual increase or decrease to the adjusted balance sheet of the section 987 QBU (determined in the functional currency of the section 987 QBU) that is not accounted for under the other computational steps. Proposed § 1.987–4(d)(10). This residual amount is translated into the owner's functional currency at the yearly average exchange rate. The residual increase or decrease is computed by applying the other computational steps described in proposed § 1.987–4(d) (steps 1 through 9) in the functional currency of the section 987 QBU. Because these steps must already be performed in the owner's functional currency, determining the residual increase or decrease to the adjusted balance sheet under proposed § 1.987–4(d)(10) is not expected to significantly increase the burden of determining net unrecognized section 987 gain or loss.

The application of proposed § 1.987–4(d)(10) would ensure that non-currency-related changes to the balance sheet do not artificially increase or decrease the pool of net unrecognized section 987 gain or loss. However, if the computational steps are applied correctly in the functional currency of a section 987 QBU, there should not be any residual increase or decrease to the balance sheet under proposed § 1.987–4(d)(10) (unless a current rate election or an annual recognition election is made). Rather, the year-over-year increase (or decrease) to the functional currency balance sheet (step 1) should equal the functional currency amount of net transfers to the section 987 QBU (steps 2 through 5) and income of the section 987 QBU (steps 6 through 8), after backing out items of income that do not impact the balance sheet (step 9). By contrast, when these steps are applied in owner functional currency, they serve to identify the balance sheet change attributable to currency movements.

For taxpayers that make a current rate election or an annual recognition election, the proposed regulations provide that steps 6 through 9 of the computation (relating to income, gain, deduction, or loss) do not need to be applied. For these taxpayers, all items of income, gain, deduction, or loss would be taken into account as a residual increase or decrease to the section 987 QBU's balance sheet and translated at the yearly average exchange rate. The Treasury Department and the IRS request comments on whether any additional adjustments are needed for section 988 gain or loss of a section 987 QBU that is subject to a current rate election or an annual recognition election. See part XV of this Explanation of Provisions (requesting comments as to whether section 988 gain or loss of a section 987 QBU should be determined in the owner's functional currency or the section 987 QBU's functional currency).

VI. Source and Character of Section 987 Gain or Loss

The final regulations provide that the source and character of section 987 gain or loss is determined in the year of a remittance using the asset method of §§ 1.861–9(g) and 1.861–9T(g). *See* § 1.987–6(b)(2). For this purpose, only the assets of the section 987 QBU are taken into account. The proposed regulations would generally retain this character and source rule, subject to certain modifications, and would further provide that taxpayers must apply only the tax book value method in characterizing the assets under proposed §§ 1.861–9(g) and 1.861–9T(g).[6] *See* proposed § 1.987–6(b)(2)(i)(A).

Proposed § 1.987–6(b)(2)(i) would provide special rules for the application of the tax book value method for initially characterizing section 987 gain or loss. Under these proposed regulations, the assets of the section 987 QBU would be initially assigned to statutory and residual groupings under the tax book value method. However, to prevent circularity, the proportions in which the tax book value of the assets would be initially assigned to the statutory and residual groups are determined without regard to section 987 gain or loss. Proposed § 1.987–6(b)(2)(i)(B). The initial assignment would occur after the application of the income attribution rules of § 1.904–4(f)(2)(vi) or 1.951A–2(c)(7) (or the

[5] Proposed § 1.987–4(g) contains new examples illustrating the proposed modifications to the computation of unrecognized section 987 gain or loss under proposed § 1.987–4(d). The Treasury Department and the IRS intend to make conforming changes to the existing examples in § 1.987–4 of the final regulations when the proposed regulations are finalized.

[6] The proposed regulations would also make a clarifying change to § 1.861–9T(g)(2)(ii)(A)(*1*) to clarify that the references to beginning-of-year and end-of-year functional currency amounts are to the owner functional currency amounts and to move certain provisions from § 1.861–9T to proposed § 1.861–9.

principles of these rules), but before expenses are allocated and apportioned to gross income and before the application of provisions that require a net income computation, such as the high-tax exception to passive category income in § 1.904–4(c), the high-tax exception to foreign base company income in § 1.954–1(d), and the high-tax exclusion from tested income in § 1.951A–2(c)(7).

In addition, because, at the time of the initial assignment, a taxpayer may not yet know whether a GILTI high-tax election will be in effect in the taxable year in which the section 987 gain or loss is recognized (since deferred section 987 gain or loss and suspended section 987 loss may be recognized in future year), the proposed regulations would initially assign all of the section 987 gain or loss that would have been assigned to a tested income group if no GILTI high-tax election was in effect to a tentative tested income group. *See* proposed § 1.987–6(b)(2)(i)(D).

The initial assignment would generally be made in the taxable year in which section 987 gain or loss is treated as recognized, deferred, or suspended under proposed § 1.987–6(b)(1). Then, in the taxable year in which the section 987 gain or loss is recognized (which may be the same taxable year as the year in which the initial assignment was made or a future taxable year), any section 987 gain or loss that was initially assigned to a tentative tested income group would be reassigned to a tested income group or residual group based on whether the GILTI high-tax election is in effect in that taxable year and, if so, whether the income is high-tax. The initial characterization under proposed § 1.987–6(b)(2)(i) would be used for purposes of applying the loss-to-the-extent-of-gain rule in proposed § 1.987–11(e) and (f), and also applies as the starting point for net income calculations required for other provisions such as the high-tax exception to passive category income under § 1.904–4(c) and the GILTI and subpart F high-tax exceptions under §§ 1.954–1(d) and 1.951A–2(c)(7). Proposed § 1.987–6(b)(2)(ii).

Proposed § 1.987–6(b)(2)(iii) would also provide that if a GILTI high-tax election is made under § 1.951A–2(c)(7)(viii), it applies to all of the section 987 gain or loss in a tentative tested income group that is recognized by the CFC in the taxable year as if the section 987 gain and loss were all assigned to its own separate tested unit of the CFC. In other words, all section 987 gain or loss recognized by the CFC in that taxable year in the same section 904 category would be treated as a single tentative tested income item for purposes of applying the GILTI high-tax exclusion.

For example, if section 987 gain and loss in a section 904 category is initially assigned to a tentative tested income group under proposed § 1.987–6(b)(i) and a GILTI high-tax election is in effect in the year in which the section 987 gain or loss is recognized, the section 987 gain or loss in the section 904 category would be treated as its own tentative tested income item for purposes of determining whether it is excluded from tested income under § 1.951A–2(c)(7), after which the section 987 gain or loss will be reassigned to a tested income group (if the item is not excluded from tested income) or to the residual category (if the item is excluded from tested income). Because foreign countries generally do not impose tax on section 987 gain, allocation and apportionment of a foreign income tax to section 987 gain under § 1.861–20 and proposed § 1.987–6(b)(3) will likely be uncommon. As a result, a tentative tested income item consisting of section 987 gain may often have a zero percent effective rate of foreign tax and, therefore, would generally not qualify for the GILTI high-tax exclusion.

As described above, the proposed regulations would provide that, for purposes of determining the source and character of section 987 gain and loss, the initial assignment of suspended section 987 loss and deferred section 987 gain and loss is generally made in the taxable year it becomes suspended or deferred (generally in the year of a remittance or the year the section 987 QBU is transferred to a related party), rather than the taxable year in which it is recognized. Proposed § 1.987–6(b)(1). The Treasury Department and the IRS anticipate that making the initial assignment in the year of suspension or deferral, rather than the year the section 987 gain or loss is recognized, will generally result in determining the source and character in a year closer in time to the year in which the section 987 loss originated, and therefore will tend to be more accurate. In addition, making an initial assignment in the taxable year of deferral or suspension means that the source and character are determined by reference to the assets of the section 987 QBU while they are still owned by the owner, rather than after they have been transferred, which would be both administratively difficult and more likely to introduce distortions to the determination.

The Treasury Department and the IRS request comments as to whether it would be appropriate to determine the source and character of unrecognized section 987 gain or loss by making the initial assignment in the taxable year in which the section 987 gain or loss is initially included in unrecognized section 987 gain or loss under § 1.987–4(d), rather than in the year of a remittance. Making the initial assignment on an annual basis would require more extensive tracking of section 987 gain or loss in separate categories. However, this approach could avoid distortions that could arise from changes in the bases of a section 987 QBU's assets or shifts in the character of its income or assets between the time unrecognized section 987 gain or loss is added to the pool and the time it is recognized. In addition, this approach could align more closely with the character of income generated by the section 987 QBU's assets at the time of the exchange rate fluctuations that give rise to section 987 gain or loss.

The proposed regulations would not change the rule in the final regulations that section 987 gain or loss that is assigned to a subpart F income group is treated as foreign currency gain or loss attributable to section 988 transactions not directly related to the business needs of the CFC. *See* proposed § 1.987–6(b)(2)(i)(C). The Treasury Department and the IRS request comments as to whether it would be appropriate to eliminate this rule and characterize section 987 gain or loss by reference to subpart F income groups (as defined in § 1.960–1(d)(2)(ii)(B)) or whether to retain this rule generally but apply a different rule to taxpayers that make a current rate election (under which section 987 gain or loss can arise with respect to assets that would not generate section 988 gain or loss in the hands of the owner).

A qualified business unit that produces income or loss that is, or is treated as, ECI is required to use the dollar as its functional currency. *See* § 1.985–1(b)(1)(v). The 2016 proposed regulations would provide an election under which a qualified business unit with a dollar functional currency may be treated as a section 987 QBU. *See* § 1.987–1(b)(6)(iii) of the 2016 proposed regulations. The Treasury Department and the IRS also request comments as to whether, and in what circumstances, section 987 gain or loss should be treated as ECI.

VII. Expansion of Entities Covered

In general, the final regulations do not apply to a bank, insurance company, leasing company, finance coordination center, regulated investment company, or real estate investment trust (a ''specified entity''), unless it engages in transactions primarily with related persons within the meaning of section 267(b) or section 707(b) that are not themselves specified entities. Additionally, the final regulations do not apply to trusts, estates, S corporations, and partnerships other than section 987 aggregate partnerships. *See* § 1.987–1(b)(1)(ii).

The Treasury Department and the IRS are concerned that excluding these entities from the application of the regulations under section 987 would not provide taxpayers with sufficient guidance to ensure these entities are using an appropriate method to calculate their section 987 gain or loss. Furthermore, if these entities are not subject to the regulations under section 987, they may use different methods of applying section 987 that vary in material ways. Applying a consistent set of rules to all taxpayers facilitates the fair and effective administration of the tax law by treating similarly situated taxpayers similarly as well as eliminating subjectivity and uncertainty.

In addition, the Treasury Department and the IRS anticipate that the new current rate election and annual recognition election described in parts II and IV of this Explanation of Provisions would provide sufficient flexibility to permit the entities excluded under the 2016 final regulations to apply the proposed regulations. As discussed in part VIII of this Explanation of Provisions, the proposed regulations also provide new rules relating to partnerships (other than section 987 aggregate partnerships) and S corporations. See part VIII of this Explanation of Provisions. These rules are expected to significantly reduce the administrative burden and complexity of applying section 987 to partnerships as compared to the aggregate rules. Accordingly, proposed § 1.987–1(b)(1)(ii) generally removes the exclusion for entities excluded from the 2016 final regulations, making them subject to the proposed regulations.

The proposed regulations generally continue to exclude foreign non-grantor trusts and foreign estates if the aggregate interests of beneficiaries that are United States persons is less than 10 percent, and foreign partnerships if the aggregate interests of the partners that are United States persons is less than 10 percent of the capital and profits interests. Proposed § 1.987–1(b)(1)(ii). The Treasury Department and the IRS are concerned that the shareholders, partners, and beneficiaries of these entities may not be able to obtain the information needed to apply the regulations to these entities, and it would be difficult for the IRS to administer the regulations with respect to these entities. For the same reason, the proposed regulations generally exclude foreign corporations that are not CFCs and foreign corporations that are CFCs but which have no U.S. shareholders (which are not excluded under the final regulations). Foreign individuals are also generally excluded as they are typically not subject to U.S. tax.

The Treasury Department and the IRS request comments on whether any additional rules are needed to facilitate the application of the proposed regulations to the entities that were excluded from the 2016 final regulations. See also part VIII of this Explanation of Provisions, requesting comments on the application of the proposed regulations to partnerships and S corporations.

VIII. Partnerships

A. Background

As explained in part II.C of the Background section, the 2006 proposed regulations and 2016 final regulations applied aggregate theory to partnerships. As explained in the preamble to the 2006 proposed regulations, the 2006 proposed regulations applied the FEEP method directly at the partner level under aggregate theory with the goal of more appropriately preserving the correct amounts of exchange gain or loss as measured from the perspective of the partner. Measuring the currency gain or loss by reference to the partner, rather than the partnership, was considered preferable because the partners would generally bear the economic risk from the exposure.

Comments to the 2006 proposed regulations requested that the Treasury Department and the IRS reconsider the aggregate approach and instead treat a partnership as a separate entity with its own functional currency. The comments indicated that the aggregate approach was overly complex and that minority partners would not have the power to compel a partnership to provide them with the information needed to make the calculations required under the aggregate approach. One comment acknowledged the economic rationale for the aggregate approach but, in light of its complexity, recommended that it apply only in cases in which a partner's interest in partnership capital or profits exceeds a certain threshold, such as 10 percent.

In the preamble to the 2016 final regulations, the Treasury Department and the IRS acknowledged concerns regarding the complexity of the applying the aggregate approach to partnerships, but determined that it would be feasible to apply an aggregate approach to partnerships that are wholly owned by related persons. Furthermore, the aggregate approach was preserved in order to prevent a group of related parties from holding eligible QBUs through partnerships instead of directly, and thereby altering the section 987 treatment of the eligible QBU without meaningfully altering the group's economic position.

As a result, the 2016 final regulations retained the aggregate approach to partnerships, but applied it only to section 987 aggregate partnerships, as discussed in Part II.C of the Background section. The 2016 final regulations did not address other partnerships.

Under the aggregate approach set forth in the 2016 final regulations, assets and liabilities reflected on the books and records of an eligible QBU of a section 987 aggregate partnership are allocated to each partner, which is considered an indirect owner of the eligible QBU. If the eligible QBU has a different functional currency than its indirect owner, then the assets and liabilities of the eligible QBU that are allocated to the partner are treated as a section 987 QBU of the indirect owner.

B. Method for Determining Share of Assets and Liabilities

The 2006 proposed regulations provided that a partner's share of assets and liabilities reflected on the books and records of an eligible QBU is determined in a manner consistent with how the partners had agreed to share the economic benefits and burdens corresponding to partnership assets and liabilities, taking into account the rules and principles of subchapter K.[7]

A comment noted that the rules in the 2006 proposed regulations for allocating assets and liabilities to a partner's indirectly owned section 987 QBU were ambiguous and that the rules and principles of subchapter K do not provide sufficient guidance in this regard. The Treasury Department and the IRS acknowledged the ambiguity in the preamble to the 2016 final regulations, and the 2016 temporary regulations provided more specific rules for determining a partner's share of the assets and liabilities reflected on the books and records of an eligible QBU owned indirectly through a section 987 aggregate partnership.

[7] A partner's basis in the partnership was adjusted to take into account any section 987 gain or loss that it recognized on any section 987 QBUs owned indirectly through the partnership.

In particular, the temporary regulations provided that, in any taxable year, a partner's share of each asset and liability of a section 987 aggregate partnership was proportional to the partner's liquidation value percentage with respect to the aggregate partnership. A partner's liquidation value percentage was defined as the ratio of the liquidation value of the partner's interest in the partnership to the aggregate liquidation value of all the partners' interests in the partnership. The liquidation value of the partner's interest in the partnership was defined as the amount of cash the partner would receive with respect to its interest if, immediately following the applicable determination date, the partnership sold all of its assets for cash equal to the fair market value of such assets (taking into account section 7701(g)), satisfied all of its liabilities (other than those described in § 1.752–7), paid an unrelated third party to assume all of its § 1.752–7 liabilities in a fully taxable transaction, and then liquidated.

Comments recommended alternative approaches for determining a partner's share of the assets and liabilities of a section 987 aggregate partnership. Some comments recommended that § 1.987–7 be withdrawn and replaced with the approach of the 2006 proposed regulations under section 987, which provided that a partner's share of assets and liabilities reflected on the books and records of an eligible QBU held indirectly through the partnership must be determined in a manner consistent with how the partners have agreed to share the economic benefits and burdens corresponding to those partnership assets and liabilities, taking into account the rules and principles of subchapter K. A comment indicated that the liquidation value percentage approach was inconsistent with certain principles of subchapter K, resulting in distortions in the calculation of section 987 gain or loss in certain cases.

The Treasury Department and the IRS determined that, in the absence of a more comprehensive set of rules for determining a partner's share of assets and liabilities reflected on the books and records of an eligible QBU held indirectly through the partnership that also articulates the interaction of those rules with applicable rules in subchapter K, a more flexible approach was warranted. Moreover, the Treasury Department and the IRS determined that, in certain instances, the liquidation value percentage methodology set forth in the 2016 temporary regulations could be interpreted as applying in a way that inappropriately distorts the computation of section 987 gain or loss. Specifically, under such an interpretation, certain changes in a partner's liquidation value percentage could introduce distortions in the calculation of net unrecognized section 987 gain or loss under § 1.987–4, giving rise to net unrecognized section 987 gain or loss that is not attributable to fluctuations in exchange rates. For example, an appreciation or depreciation in property value could result in a change in liquidation value percentage that causes a change in owner functional currency net value for purposes of step 1 of the § 1.987–4(d) calculation of unrecognized section 987 gain or loss for a taxable year without creating an offsetting adjustment under step 6 or otherwise that would prevent the change in liquidation value percentage from distorting the calculation of unrecognized section 987 gain or loss. As a result, such unrecognized appreciation or depreciation generally could result in unrecognized section 987 gain or loss for a taxable year being allocated to each partner that indirectly owned a section 987 QBU even when there was no change in exchange rates.

Accordingly, the Treasury Department and the IRS withdrew § 1.987–7T in the 2019 final regulations. The preamble to the 2019 final regulations stated that, until new regulations are proposed and finalized, taxpayers may use any reasonable method for determining a partner's share of assets and liabilities reflected on the books and records of an eligible QBU held indirectly through the partnership. For this purpose, taxpayers may rely on subchapter K principles (consistent with the 2006 proposed regulations) or an approach similar to the liquidation value percentage method set forth in § 1.987–7T. However, it would not be reasonable to apply the liquidation value percentage method in § 1.987–7T without corresponding adjustments to the determination of net unrecognized section 987 gain or loss. Thus, for example, a taxpayer using the liquidation value percentage method may be required to adjust its determination of net unrecognized section 987 gain or loss of a section 987 QBU that is owned indirectly through a partnership to prevent the determination of unrecognized section 987 gain or loss that is not attributable to fluctuations in exchange rates. These adjustments may include, for example, treating any change in a partner's owner functional currency net value that is attributable to a change in the partner's liquidation value percentage as resulting in a transfer to or from an indirectly owned section 987 QBU.

C. The Proposed Regulations Apply Entity Theory to Non-Section 987 Aggregate Partnerships

As previously discussed in part VIII.A of this Explanation of Provisions, although the final regulations applied the aggregate approach to section 987 aggregate partnerships, the final regulations did not provide rules for applying section 987 to other partnerships. The preamble to the 2016 final regulations stated that section 987 regulations would be developed for these other partnerships in a separate project and indicated that a different approach might be taken. To that end, the preamble requested comments on how an entity approach should work for non-section 987 aggregate partnerships.

Several comments were received asserting that the aggregate approach to partnerships under the 2016 final regulations was overly complex. Comments recommended that a partnership be treated as a separate entity with its own functional currency that can be the owner of a section 987 QBU. Comments also indicated that entity treatment would be more consistent with the principles of subchapter K.

The Treasury Department and the IRS agree that treating non-section 987 aggregate partnerships as an entity and therefore potentially an ''owner'' of section 987 QBUs would be more administrable than an aggregate approach and would reduce the compliance burden on taxpayers and the IRS. However, the Treasury Department and the IRS continue to study whether partners might be able to achieve inappropriate outcomes under entity theory. For example, the Treasury Department and the IRS are concerned that if partnerships maintained section 987 gain and loss pools under a ''pure'' entity theory paradigm, partners would effectively be able to transfer their share of net unrecognized section 987 gain or loss to another partner, thereby avoiding gain recognition or trafficking in losses. To prevent a partner from transferring its share of net unrecognized section 987 gain or loss to another partner, the proposed regulations would generally apply a hybrid approach to entity theory, under which a partnership's net unrecognized section 987 gain or loss with respect to its section 987 QBUs is allocated to its partners on an annual basis (the ''hybrid approach to entity theory''), as described in part VIII.D of this Explanation of Provisions.

The hybrid approach to entity theory may reduce concerns about inappropriate outcomes that might otherwise arise from the transfer of partnership interests under an entity theory approach. However, as described in part VIII.D and E of this Explanation of Provisions, while the Treasury Department and the IRS study whether the hybrid approach to entity theory (or a variation thereof) is suitable for all partnerships, the proposed regulations maintain the aggregate approach to section 987 aggregate partnerships in the final regulations, as modified by the 2019 final regulations, with minimal changes. Special rules are provided in proposed § 1.987–7C for partnerships that become (or cease to be) section 987 aggregate partnerships. In addition, for consistency with other transfers of a section 987 QBU, the proposed regulations would treat a change in the form of ownership from direct to indirect as a termination of the section 987 QBU under proposed § 1.987–8(b)(6), subject to the deferral rules pursuant to proposed § 1.987–12(g)(1)(i)(A). The Treasury Department and the IRS anticipate publishing a subsequent notice of proposed rulemaking that more thoroughly addresses the application of section 987 to partnerships.

D. The Hybrid Approach to Entity Theory

Under the proposed regulations, a partnership (other than a section 987 aggregate partnership) would be treated as a qualified business unit having its own functional currency. *See* § 1.989(a)–1(b)(2)(i)(C); *see also* § 1.985–1(a)(1). If a partnership owns an eligible QBU with a functional currency that is different from the functional currency of the partnership, the eligible QBU would be treated as a section 987 QBU and the partnership (and not the partner) would generally be treated as the owner of the eligible QBU. *See* proposed §§ 1.987–1(b)(4) through (5) and 1.987–7A(b).

A partnership that owns a section 987 QBU would determine its unrecognized section 987 gain or loss for a taxable year under proposed § 1.987–4(d) by reference to the functional currency of the partnership and the section 987 QBU. Proposed § 1.987–7A(b). Under the hybrid approach, the partnership would allocate to each partner a share of the unrecognized section 987 gain or loss for the taxable year with respect to each section 987 QBU owned by the partnership on an annual basis. The partnership would determine a partner's share of the unrecognized section 987 gain or loss for the taxable year for each section 987 QBU based on the partner's distributive share of profits and losses attributable to that section 987 QBU for the taxable year. At the partner level, each partner would translate its share of the unrecognized section 987 gain or loss into its functional currency at the yearly average exchange rate and calculate its net unrecognized section 987 gain or loss with respect to each section 987 QBU of the partnership based on this share. Proposed § 1.987–7A(c)(1).

Section 987 gain or loss attributable to a section 987 QBU owned by a partnership would be recognized and taken into account at the partner level. Notwithstanding that the section 987 gain or loss pools are allocated to the partners and maintained at the partner level, the portion of the net unrecognized section 987 gain or loss that a partner would recognize (or suspend) each year under proposed § 1.987–5(a) would be determined by reference to the partnership's remittance proportion with respect to the section 987 QBU. Proposed § 1.987–7A(c)(3). In other words, if the section 987 QBU is treated as remitting 20 percent of its gross assets to its owner, the partnership, in a taxable year of the partnership, each partner that has net unrecognized section 987 gain or loss with respect to the section 987 QBU would recognize (or suspend) 20 percent of the net unrecognized section 987 gain or loss.

The proposed regulations provide a framework for adjusting a partner's basis in its partnership interest based on the principles of section 705 when a partner recognizes section 987 gain or loss, defers section 987 gain or loss, or suspends section 987 loss attributable to a partnership. *See* proposed § 1.987–7A(d). Similarly, if a partner in an upper-tier partnership (UTP) recognizes section 987 gain or loss, defers section 987 gain or loss, or suspends section 987 loss attributable to a lower-tier partnership (LTP), then the proposed regulations would provide that UTP makes a corresponding basis adjustment to its interest in LTP, with similar rules applying to each successive partnership through which the section 987 gain or loss is attributable. The basis adjustment between UTP and LTP or between LTPs constitutes a basis adjustment solely with respect to the partner that recognizes section 987 gain or loss, defers section 987 gain or loss, or suspends section 987 loss attributable to the partnership. The Treasury Department and the IRS request comments on the coordination of these proposed regulations applicable to partnerships with rules for capital accounts determined and maintained in accordance with § 1.704–1(b)(2)(iv). Additionally, the Treasury Department and the IRS request comments on the appropriate currency in which section 743(b) basis adjustments with respect to assets of a section 987 QBU of a partnership should be maintained.

The proposed regulations would also provide rules for applying proposed §§ 1.987–11 through 1.987–13 (regarding deferred section 987 gain or loss and suspended section 987 loss) to partners and partnerships. Specifically, the application of the loss-to-the-extent-of-gain rule to suspended section 987 loss of the partner is done at the partner level. Proposed § 1.987–7A(c)(4). As a result, any section 987 gain recognized by a partner is taken into account in determining the suspended section 987 loss that may be recognized by the partner under proposed § 1.987–11(e), without regard to whether the section 987 gain was allocated to the partner from that partnership (or any other partnership) or was attributable to a section 987 QBU owned directly by the partner. Other rules under proposed §§ 1.987–11 through 1.987–13 would generally apply with respect to a partnership, but may be applied with respect to a partner that ceases to be a partner in the partnership.

In general, the section 987 elections would be made by the partnership. However, if a partner terminates its partnership interest, any annual recognition election in effect with respect to the partner would apply with respect to its deferred section 987 gain or loss or suspended section 987 loss that had been allocated to the partner by the partnership. The partner would also be permitted to make the election to recognize pretransition section 987 gain or loss ratably over the transition period under the transition rules. *See* proposed §§ 1.987–7A(c)(5)(ii) and 1.987–10(e)(5)(ii).

The Treasury Department and the IRS are studying the appropriate method for determining the portion of a partner's net unrecognized section 987 gain or loss, deferred section 987 gain or loss, and suspended section 987 loss that should be recognized, deferred, or suspended when a portion of a partner's interest in a partnership is transferred or redeemed (or the partner's interest in the partnership is otherwise reduced) and whether any special rules are needed in respect of a transfer or redemption of a partnership interest to account for the recognition of section 987 gain or loss at the partner level. Accordingly, the proposed regulations reserve on the treatment of transfers and redemptions of a partner's partnership interest. The Treasury Department and the IRS request comments on the appropriate method of determining the partner's interest in the partnership and the reduction to its interest in the partnership, as well as how increases to a partner's partnership interest during the year should be taken into account. In addition, the Treasury Department and the IRS request comments on the appropriate treatment of transfers of a partnership interest between related parties or between member of a consolidated group.

In general, proposed § 1.987–6 would provide rules governing the character and source of section 987 gain or loss. See part VI of this Explanation of Provisions. The proposed regulations reserve on whether any special rules are needed in addition to proposed § 1.987–6 for purposes of determining the character and source of section 987 gain or loss of a partner with respect to a section 987 QBU owned by a partnership. Proposed § 1.987–7A(e). Comments are requested on whether special rules are needed.

The proposed regulations would treat S corporations in the same manner as partnerships. Proposed § 1.987–7A(f). Comments are requested on whether additional guidance is needed with regard to S corporations and whether there are instances in which the rules for S corporations should differ from the rules for partnerships.

The Treasury Department and the IRS also request comments as to whether, under an entity theory of partnerships, section 987 gain or loss could be recognized at the partnership level and then allocated to the partners while preventing the transfer of unrecognized section 987 gain or loss among the partners or between a transferor and transferee partner. Under the hybrid approach in the proposed regulations, a partner's recognition of section 987 gain or loss upon a sale or other disposition of a partnership interest results in the conversion of capital gain or loss to ordinary gain or loss without any remittance from the partnership QBU and without any change in the relationship between the QBU and its owner. Comments are requested on whether special rules are needed to prevent the conversion of capital gain or loss to ordinary gain or loss. In addition, comments are requested on whether the recognition of section 987 gain or loss upon a transfer or redemption of a partnership interest should be limited to the gain or loss that would otherwise be recognized on transfer or redemption, under rules similar to § 1.988–2(b)(8).

E. Expanding the Application of Entity Theory

The Treasury Department and the IRS continue to study the application of entity theory and aggregate theory to partnerships in the section 987 context, including whether it would be appropriate to apply a hybrid approach to entity theory to all partnerships, regardless of whether the partners are related parties. Such an approach would generally result in a partnership generating the same amount of section 987 gain or loss as it would if it were a corporation or an individual.

In connection with these considerations, the Treasury Department and the IRS are studying the concerns expressed in the 2006 proposed regulations and the final regulations that parties could achieve a substantially different section 987 result by owning a section 987 QBU through a partnership, rather than owning the section 987 QBU directly, without meaningfully changing the economic relationship of the parties.

Consider, for example, a domestic corporation that wholly owns two CFCs, each of which use the euro as their functional currency, and which each own fifty percent of an entity treated as a foreign partnership (''P'') that operates a British trade or business for which books and records are maintained in pounds. P also has a smaller separate French trade or business that is an eligible QBU that maintains books and records in euros. If just one CFC owned P, then P would be treated as an entity disregarded from its owner, and the CFC would have section 987 gain or loss with respect to its interest in P's pound operations. However, if an election was made to treat P as a corporation under § 301.7701–3, P would be treated as a CFC that uses the pound as its functional currency and section 987 gain or loss with respect to P's euro operations would be measured against the pound, rather than against the functional currency of P's partners. Accordingly, it could be argued that, for section 987 purposes, when a partnership is held by CFCs, aggregate theory achieves a result that is more akin to treating P as a disregarded entity and entity theory achieves a result more akin to treating P as a corporation.

However, if instead of being owned by two CFCs, P were owned by two domestic corporations that use the dollar as their functional currency, aggregate theory would achieve a result akin to treating P as a disregarded entity, while entity theory may provide a means of allowing the domestic corporations to avoid the application of section 987 to P's pound trade or business without needing to contribute the trade or business to a CFC, which might have other tax consequences. *See, e.g.,* section 367(a) and (d). Accordingly, the Treasury Department and the IRS are concerned that if only entity theory is applied to partnerships, there may be instances in which the business of the partnership should be subject to section 987 but is not, such as when two domestic corporations own a partnership doing business in the pound.

When a partner's functional currency differs from that of the partnership, creating a separate layer of currency exposure, the Treasury Department and the IRS are studying whether it might be possible to achieve a result consistent with aggregate theory without the administrative burden of allocating a portion of a partnership's assets and liabilities to each partner and calculating the income and balance sheets of the partnership in the functional currency of each partner. One such approach might determine a partner's section 987 gain or loss with respect to the partnership by reference to the partner's outside basis in the partnership, rather than its share of the inside asset basis and liabilities (the ''outside basis approach'').

The outside basis approach would be layered on top of the hybrid approach to entity theory taken by the proposed regulations. Under this system, a partnership would first determine its section 987 gain or loss with respect to any section 987 QBUs of the partnership, and allocate the pool to the partners, as described in § 1.987–7A of the proposed regulations. If a partner has the same functional currency as the partnership, no additional steps are taken.

If a partner has a different functional currency than the partnership, under one alternative (''alternative 1''), the partner would calculate its section 987 gain or loss with respect to its interest in the partnership (including its interest in the functional currency trade or business of the partnership and its interest in each of the partnership's section 987 QBUs) using a method similar to the calculation of unrecognized section 987 gain or loss for an owner applying the current rate election under proposed § 1.987–4(d) (that is, steps 1 through 5 and 10), but by reference to the partner's adjusted basis in its partnership interest (''outside basis'') in the partnership.

Specifically, the partner's annual section 987 gain or loss attributable to its share of the partnership as a whole would be equal to its outside basis determined as of the end of the partnership's taxable year (after taking into account other adjustments prescribed under section 705 but before any adjustments for section 987 gain or loss recognized under the outside basis approach) and translated into the partnership's functional currency reduced by its outside basis determined as of the beginning of the same partnership taxable year and translated into the partnership's functional currency (the ''partnership functional currency change in value'') (step 1). The partnership functional currency change in value would then be adjusted to subtract the partnership functional currency amounts of contributions to the partnership from the partner and add the partnership functional currency amounts of distributions from the partnership to the partner (steps 2 through 5). The result would then be adjusted to back out the partnership functional currency amount of the partner's allocable share of income, gain, deduction, and loss of the partnership (step 10). The result is the partner's unrecognized section 987 gain or loss attributable to its partnership interest. Under alternative 1, the partner's unrecognized section 987 gain or loss attributable to its partnership interest would be recognized annually and its basis in the partnership would be increased or decreased accordingly. Alternative 1 approximates the result a partner would achieve under aggregate theory if it applied the current rate election and the annual recognition election.

Annual recognition is necessary under alternative 1 to prevent differences in the partnership's adjusted bases in its assets (''inside basis'') attributable to fluctuations in the functional currency of the partnership itself or any section 987 QBUs owned by the partnership and the partners' outside bases (an ''inside-outside basis disparity''). By adjusting outside basis for these currency fluctuations, the partner's section 987 gain or loss with respect to the partnership will include section 987 gain or loss on the partnership's owner functional currency net value of the partnership's section 987 QBUs. As a result, the sum of the owner's section 987 gain or loss attributable to its partnership interest under the outside basis approach, plus its allocable share of the partnership's net unrecognized section 987 gain or loss attributable to the partnership's section 987 QBUs should generally be equivalent to the sum of its unrecognized section 987 gain or loss attributable to section 987 QBUs indirectly owned by the partner through the partnership under the aggregate approach (assuming there are no other inside-outside basis disparities).

Alternatively, under another alternative (''alternative 2''), it may not be necessary to require recognition of the partner's section 987 gain or loss annually. Under this approach, the same method is used to determine the partner's section 987 gain or loss with respect to its partnership interest as in alternative 1, except that the partnership functional currency change in value would be determined, not just by reference to the partner's outside basis in the partnership, but to the sum of its outside basis and its net accumulated unrecognized section 987 gain or loss attributable to the partnership and the partnership's section 987 QBUs (that is, the amount that would have been recognized if the partner had been recognizing its section 987 gain and loss attributable to the partnership annually as under alternative 1). Under alternative 2, the partner's unrecognized section 987 gain or loss attributable to its partnership interest might be recognized when it receives a distribution from the partnership or disposes of a portion of its partnership interest.

Both alternative 1 and alternative 2 approximate the result a partner would achieve under aggregate theory if it applied the current rate election to its partnership interest. However, alternative 1, but not alternative 2, requires annual recognition of the partner's net unrecognized section 987 gain or loss. Accordingly, no additional loss limitations may be needed for alternative 1. *See* part IV.C of this Explanation of Provisions. However, it may be appropriate for the partner's net accumulated unrecognized section 987 gain or loss under alternative 2 to be subject to the loss-to-the-extent-of-gain rule in § 1.987–11(e) of the proposed regulations.

Under one variation to these alternative approaches, the partner's net accumulated unrecognized section 987 gain or loss attributable to its partnership interest would net with the partner's net unrecognized section 987 gain or loss with respect to the partnership's section 987 QBUs when one amount reflects section 987 gain and the other reflects section 987 loss.

Comments are requested on whether the outside basis approach or a similar system would achieve results consistent with aggregate theory in a more administrable manner. Furthermore, comments are requested on instances in which this system might inappropriately diverge from aggregate theory and how such divergences might be addressed. For example, if inside basis and outside basis are not equivalent (for example, because a partner acquires a partnership interest in a year in which a section 754 election is not in effect), how the resulting mismatch might be minimized or eliminated for purposes of measuring the partner's currency exposure with respect to the partnership. Comments are also requested on whether the outside basis approach or a similar system should apply to partners of (i) all partnerships, (ii) only those partnerships currently treated as section 987 aggregate partnerships, or (iii) only those partnerships in which the partner owns more than 50 percent of the partnership interest (taking into account constructive ownership).

In addition, comments are also requested on any additional rules that might be necessary to coordinate the outside basis approach or a similar system with the section 987 regulations or with subchapter K, when the functional currency of a partner, the partnership, and the partnership's section 987 QBU differ.

IX. Attribution of Items to the Section 987 QBU

The final regulations provide rules regarding when assets and liabilities, as well as items of income, gain, deduction, and loss are attributable to an eligible QBU, and when a section 987 QBU is treated as making a contribution or distribution to its owner or another eligible QBU of the owner. *See* § 1.987–2. In general, the proposed regulations retain the rules in the final regulations with minor or clarifying revisions. However, in a change from the final regulations, the proposed regulations would treat a change in the form of ownership of a section 987 QBU as a termination, as discussed above.

In general, the final regulations provide that items are attributable to an eligible QBU if they are reflected on the separate set of books and records of the eligible QBU, as defined in § 1.989(a)–1(d). § 1.987–2(b)(1). The proposed regulations would revise the cross-reference to refer to § 1.989(a)–1(d)(1) or (2), as § 1.989(a)–1(d)(3) refers back to § 1.987–2(b). Proposed § 1.987–2(b)(1).

In addition, the final regulations provide that an eligible QBU is not treated as owning stock of a corporation unless the owner of the eligible QBU owns less than 10 percent of the value of the corporation (after taking into account certain attribution rules). § 1.987–2(b)(2)(i). In order to generally prevent an eligible QBU from owning stock of a CFC, the proposed regulations would expand the exclusion to cover all stock unless the owner owns less 10 percent of both the vote and value of the corporation, and to revise the relevant attribution rules. Proposed § 1.987–2(b)(2)(i). The proposed regulations also provide that any type of basis that does not affect the income and loss of the eligible QBU, such as section 743(b) basis, would not be treated as included on the books and records of the eligible QBU. Proposed § 1.987–2(b)(5).

Similarly, the final regulations provide rules regarding when a transaction or the recording of an asset or liability as on (or not on) the books and records of a section 987 QBU is treated as a disregarded transaction between the section 987 QBU and its owner or another eligible QBU of the owner. § 1.987–2(c). The proposed regulations generally retain the substance of these rules but make minor revisions for clarity. *See* proposed § 1.987–2(c).

X. Transition Rules

As explained in part II.C of the Background section, the 2016 final regulations require all owners of section 987 QBUs to apply the fresh start transition method. Under this method, unrecognized section 987 gain or loss determined for years before the transition date generally would not be taken into account under section 987. In addition, for purposes of applying the FEEP method in the first year in which the regulations apply, the assets and liabilities of the section 987 QBU must be translated using historic rates.

Comments stated that the fresh start transition method is difficult to apply because taxpayers did not track historic rates before the transition date and the data needed to determine historic rates for items acquired in prior taxable years is not readily available. In addition, comments asserted that the fresh start transition method imposes an undue financial burden by permanently eliminating unrecognized section 987 losses determined before the transition date.

The Treasury Department and the IRS acknowledge that the fresh start transition method could increase the compliance burden on taxpayers for the initial year in which the regulations apply and would fail to account for section 987 gain or loss that arose before the transition date (to the extent attributable to assets and liabilities that are no longer reflected on the books and records of the section 987 QBU on the transition date). Therefore, the proposed regulations provide a new transition rule that would replace the fresh start transition method.

The new transition rule would account for unrecognized section 987 gain or loss accrued before the transition date. In addition, the new transition rule would not require taxpayers to retrospectively determine historic rates for items acquired before the transition date. As explained in the Applicability Dates section, the fresh start transition method can no longer be applied to any taxable year for which the tax return or information return is filed on or after November 9, 2023.

A. Translation of a Section 987 QBU's Assets and Liabilities at the Spot Rate

The transition rules under proposed § 1.987–10 would apply in the taxable year beginning on the transition date (that is, the first day of the first taxable year in which the regulations apply). For purposes of determining unrecognized section 987 gain or loss in the first taxable year in which the regulations apply, the assets and liabilities reflected on a section 987 QBU's balance sheet at the end of the previous year would be translated into the owner's functional currency at the spot rate on the day before the transition date. Proposed § 1.987–10(d)(1). Similarly, for taxpayers that do not make a current rate election, the historic rate for historic assets and liabilities would generally be the spot rate on the day before the transition date. Proposed § 1.987–10(d)(2). These rules are intended to simplify the application of the FEEP method by eliminating the need to determine actual historic rates in the first taxable year in which the regulations apply.

B. Pretransition Gain or Loss

Under the proposed regulations, an owner of a section 987 QBU must determine the amount of section 987 gain or loss that has accrued before the transition date (''pretransition gain or loss''). Proposed § 1.987–10(e). By default, in the first taxable year in which the regulations apply, pretransition gain is treated as net unrecognized section 987 gain, and pretransition loss is treated as suspended section 987 loss. Proposed § 1.987–10(e)(5)(i). This proposed rule is intended to prevent taxpayers from selectively recognizing pretransition loss (which, like section 987 loss generated under a current rate election, may be computed using a method that results in large section 987 pools) while deferring pretransition gain until a remittance. Alternatively, taxpayers can elect to amortize pretransition gain or loss over a period of ten years beginning on the transition date. Proposed § 1.987–10(e)(5)(ii).

In order to prevent owners subject to this election from offshoring pretransition gain or importing pretransition loss, proposed § 1.987–10(e)(5)(ii)(B) provides that, immediately before an inbound or outbound transaction described in section 381(a), any unrecognized pretransition gain is recognized and any unrecognized pretransition loss is suspended. As a result, the suspended section 987 loss may be recognized, subject to the loss-to-the-extent-of-gain-rule under § 1.987–11(e). In the case of an inbound section 381(a) transaction of a foreign owner with pretransition loss, any suspended section 987 loss that is not recognized before the transaction would not carry over to the domestic acquiring corporation under proposed § 1.987–13(g). *See* part III.C of this Explanation of Provisions.

C. Computation of Pretransition Gain or Loss

Under proposed § 1.987–10(e)(2), a taxpayer that applied section 987 before the transition date using an ''eligible pretransition method'' (described in part X.D of this Explanation of Provisions) would use that method to compute pretransition gain or loss. Pretransition gain or loss generally is equal to the amount of section 987 gain or loss that would have been recognized under the eligible pretransition method if the QBU terminated on the day before the transition date. Proposed § 1.987–10(e)(2)(i)(A). The amount of pretransition gain or loss must be adjusted to reflect any change to the basis of the section 987 QBU's assets (net of liabilities) that occurs as a result of the transition (for example, where the taxpayer previously used a method that would determine the owner's basis in distributed assets using historic rates). Proposed § 1.987–10(e)(2)(i)(B).

A taxpayer that did not apply an eligible pretransition method before the transition date would determine pretransition gain or loss using the method provided in § 1.987–10(e)(3). Under this method, pretransition gain or loss is equal to the sum of the annual amounts of unrecognized section 987 gain or loss for each taxable year since the section 987 QBU's inception, reduced by any section 987 gain or loss recognized before the transition date. Proposed § 1.987–10(e)(3)(ii).

The amount of unrecognized section 987 gain or loss for each taxable year would be computed using a simplified version of the method provided in § 1.987–4(d). Proposed § 1.987–10(e)(3)(iii). The only information needed to apply this simplified method is the information reflected in the section 987 QBU's opening and closing balance sheets for each year. Because this method does not require the translation of contributions and distributions at the applicable spot rate, it would only approximate the actual amount of section 987 gain or loss accrued before the transition date.

D. Eligible Pretransition Method

1. In General

An eligible pretransition method includes any reasonable method of applying section 987 before the transition date that fully accounts for foreign currency gain or loss attributable to the assets and liabilities of a section 987 QBU (including foreign currency gain or loss that is recognized in computing taxable income with respect to the section 987 QBU or its owner). The method provided in the 1991 proposed regulations, which determines section 987 gain or loss based on currency fluctuations with respect to the earnings and capital of a section 987 QBU (an ''earnings and capital'' method) is considered an eligible pretransition method, provided that it is applied in a reasonable manner. Proposed § 1.987–10(e)(4)(i). In addition, any other reasonable method of applying section 987 is an eligible pretransition method if it produces the same total amount of income over the life of the owner (taking into account the aggregate of section 987 gain or loss, section 987 taxable income or loss, and gain or loss on the disposition of assets and liabilities transferred by a section 987 QBU to the owner) as a reasonable earnings and capital method. Proposed § 1.987–10(e)(4)(ii). However, a method under which the owner does not recognize section 987 gain or loss at the time of a remittance because the recognition of all section 987 gain or loss is deferred until the section 987 QBU terminates is not considered an eligible pretransition method because it is inconsistent with the statutory requirements under section 987(3). Proposed § 1.987–10(e)(4)(iv).

2. Earnings Only Method

An earnings only method can qualify as an eligible pretransition method under proposed § 1.987–10(e)(4)(ii) if it is applied in a way that produces the same total amount of income as a reasonable earnings and capital method. This can be accomplished by maintaining a separate set of equity and basis pools for the section 987 QBU's capital account and assigning a proportionate amount of the capital basis pool to property distributed out of capital. *See* proposed § 1.987–10(l)(2) (*Example 2*).

The Treasury Department and the IRS are aware that certain taxpayers apply an earnings only method in a manner that creates a permanent difference in their income (as compared to the earnings and capital method). Under this approach, when a section 987 QBU makes a distribution (whether out of earnings or capital), the owner determines its basis in the distributed assets by translating the section 987 QBU's basis into the owner's functional currency at the spot rate applicable on the distribution date (''spot-rate basis''). *See* proposed § 1.987–10(l)(3) (*Example 3*). As a result, the owner's basis may be higher or lower than the actual cost of acquiring the assets (in the owner's functional currency) due to exchange rate fluctuations.

When a section 987 QBU makes a distribution out of earnings, which triggers the recognition of section 987 gain or loss under an earnings only method, the use of a spot-rate basis is appropriate. However, when a section 987 QBU makes a distribution out of capital (on which no section 987 gain or loss is recognized under an earnings only method), the use of a spot-rate basis artificially steps up (or steps down) the basis of the distributed assets in the absence of a recognition event. As a result, if a spot-rate basis is used for capital distributions under an earnings only method, the owner would not recognize the same total amount of income as it would under an earnings and capital method.

The Treasury Department and the IRS are concerned that the use of a spot-rate basis for capital distributions under an earnings only method does not accurately measure an owner's economic income with respect to a section 987 QBU. However, the Treasury Department and the IRS acknowledge that the preamble to the 2006 proposed regulations endorsed the use of an earnings only method without explaining how the basis of distributed assets should be determined. Taxpayers may have misunderstood the preamble to suggest that an owner of a section 987 QBU can take a spot-rate basis in all distributed assets under an earnings only method.

Therefore, the proposed regulations provide that an earnings only method that does not produce the same total amount of income as a reasonable earnings and capital method can qualify as an eligible pretransition method, provided it was first applied on a tax return filed before November 9, 2023 and is consistently applied to all section 987 QBUs of the same owner. Proposed § 1.987–10(e)(4)(iii). A taxpayer that begins applying this method on or after November 9, 2023 or fails to apply this method consistently to all of its section 987 QBUs will not be treated as applying an eligible pretransition method.

XI. Deferral Events and Outbound Loss Events

A. Final Regulations

Section 1.987–12 of the final regulations contains rules that defer the recognition of section 987 gain or loss in connection with two categories of related party transactions: deferral events and outbound loss events. A deferral event is defined to include certain transactions in which a section 987 QBU terminates and its assets are reflected on the books and records of a successor QBU after the termination. *See* § 1.987–12(b)(2). A successor QBU is a section 987 QBU that is owned by a member of the same controlled group as the original owner (except if the original owner is a U.S. person and the owner of the successor QBU is a foreign person). *See* § 1.987–12(b)(4). Section 987 gain or loss that is not recognized in connection with a deferral event (''deferred section 987 gain or loss'') is recognized by the original owner of the section 987 QBU when the successor QBU makes a remittance to its owner. *See* § 1.987–12(c)(2).

An outbound loss event is defined to include a termination of a section 987 QBU that is owned by a U.S. person and has net unrecognized section 987 loss in connection with a transfer of the section 987 QBU's assets to a related foreign person. *See* § 1.987–12(d)(2). If the transfer is a transaction described in section 351 or section 361, any section 987 loss that is not recognized in connection with the outbound loss event (''outbound section 987 loss'') is added to the basis of stock received by the owner of the section 987 QBU. *See* § 1.987–12(d)(4). Otherwise, outbound section 987 loss is recognized when the owner of the section 987 QBU and the related foreign person cease to be members of the same controlled group. *See* § 1.987–12(d)(5).

B. Proposed Regulations

1. Deferral Events

The proposed regulations generally retain the principles of the final regulations relating to deferral events but modify the rules in several respects. For example, the final regulations provide a de minimis rule pursuant to which § 1.987–12 would not apply to a section 987 QBU if the section 987 gain or loss that would not be recognized under § 1.987–12 would not exceed $5 million. § 1.987–12(a)(3)(ii). To prevent the de minimis rule from allowing an owner to recognize more than the threshold by transferring multiple section 987 QBUs to members of its controlled group, the proposed regulations would retain the de minimis rule but apply the threshold to the total deferred section 987 gain or loss that would otherwise be recognized by the owner in a single taxable year. Proposed § 1.987–12(a)(2)(ii). In addition, because the proposed regulations would apply the suspended section 987 loss rules to outbound loss events, any amount treated as a suspended section 987 loss is not taken into account in determining whether the threshold has been met. *Id.*

The final regulations also provide that, if a deferral event results in multiple successor QBUs, the remittance proportion is determined by treating all the successor QBUs as a single successor QBU. § 1.987–12(c)(2)(ii). The Treasury Department and the IRS are concerned that aggregating the contributions and distributions of various successor QBUs in order to treat them as the same successor QBU both increases the administrative burden of determining the remittance proportion and is less precise than determining a remittance proportion for each successor QBU. Therefore, the proposed regulations would apportion an amount of deferred section 987 gain or loss to each successor QBU and recognize (or suspend) a portion of deferred section 987 gain or loss annually with respect to each successor QBU based on the specific successor QBU's remittance proportion and on whether that successor QBU is subsequently transferred. Proposed § 1.987–12(b)(2) and (c).

Although the proposed regulations generally retain the deferral rules of § 1.987–12(b) with respect to those circumstances in which they apply under the final regulations, the Treasury Department and the IRS recognize that this can lead to odd results in certain cases, because similar transactions may sometimes be subject to the deferral rules and other times be subject to no limitation or the suspended loss rules.

For example, if a CFC (''CFC1'') with a euro functional currency owns a section 987 QBU (''QBU1'') with a pound functional currency, and CFC1 transfers QBU1 to a wholly owned subsidiary CFC (''CFC2''), the deferral rules would generally apply if CFC2's functional currency is not the pound. However, if CFC2's functional currency is the pound, the deferral rules would not apply because QBU1 would cease to be a section 987 QBU upon transfer to CFC2, because it would have the same functional currency as its owner. As a result, if CFC1 does not have a current rate election in effect (or has both a current rate election and an annual recognition election in effect), CFC1 would recognize its net unrecognized section 987 gain or loss with respect to QBU1 on the transfer. However, if CFC1 has a current rate election in effect (and does not have an annual recognition election in effect), CFC1 would recognize net unrecognized section 987 gain on the transfer, but net unrecognized section 987 loss would become suspended section 987 loss.

The Treasury Department and the IRS request comments on whether the deferral rules of proposed § 1.987–12 should remain a separate deferral regime or should be modified or combined with the suspended loss rules of proposed §§ 1.987–11 and 1.987–13.

2. Outbound Loss Events

The proposed regulations generally retain the definition of an outbound loss event contained in the final regulations. However, the proposed regulations provide that outbound section 987 loss is treated as suspended section 987 loss, instead of being added to the basis of stock or recognized solely when the owner of the section 987 QBU and the related foreign person cease to be related. This rule is intended to permit the recognition of outbound section 987 loss to the extent the owner recognizes section 987 gain in the same recognition grouping, as described in part III of this Explanation of Provisions. In addition, applying the loss suspension rules to outbound loss events simplifies the proposed regulations by reducing the number of different types of deferral regimes that apply to section 987 losses.

XII. Making and Revoking Elections

The final regulations contain a number of elections relating to section 987. The proposed regulations contain several new elections, including the current rate election, the annual recognition election, and elections under the transition rules.

Under the final regulations, elections generally are made separately for each section 987 QBU. *See* § 1.987–1(g)(1)(i). Elections cannot be revoked without the Commissioner's consent. *See* § 1.987–1(g)(5). Under the 2016 temporary and proposed regulations, an annual deemed termination election generally cannot be made (except in the first taxable year in which the election was relevant) if the aggregate net loss that would be recognized by all owners to which the election applied exceeds $5 million. *See* § 1.987–1T(g)(2)(i)(B). The annual deemed termination election provided in the 2016 temporary and proposed regulations is irrevocable.

The proposed regulations would provide a consistency requirement that applies to both the existing elections under the final regulations and the new elections under the proposed regulations. Under proposed § 1.987–1(g), these elections would be required to be made or revoked consistently for all members of the same consolidated group and all CFCs, partnerships, non-grantor trusts, and estates in which the ownership interests or beneficiary interests of the U.S. shareholder (or members of its consolidated group) exceed 50 percent. The consistency requirement is intended to make the application of the proposed rules less complex and more administrable; in most cases, consistent application of the regulations is also expected to reduce the compliance burden on taxpayers.

The proposed regulations would permit a current rate election or an annual recognition election to be made or revoked without the Commissioner's consent. The Treasury Department and the IRS recognize that these elections can have important consequences for the substantive application of section 987 and the associated compliance burden, and that taxpayers may wish to change these elections in response to changes in the nature and size of their business operations.

However, the current rate and annual recognition elections are proposed to be subject to timing restrictions and a loss suspension rule. If a current rate election or an annual recognition election is made, it cannot be revoked for five years without the Commissioner's consent. Similarly, once revoked, these elections cannot be made again for five years without consent. Proposed § 1.987–1(g)(3)(ii)(B). These timing requirements are intended to make the proposed regulations easier to administer. In addition, because the Commissioner's consent is not required to make or revoke these elections, the timing requirements are needed to prevent taxpayers from opportunistically making or revoking elections in response to exchange rate fluctuations.

Proposed § 1.987–11(d)(2) provides that, in the first year in which a current rate election is revoked, net accumulated unrecognized section 987 loss is converted into suspended section 987 loss. This rule is needed to prevent net unrecognized section 987 loss generated under a current rate election from being recognized without limitation after the election is revoked.

Similarly, if an annual recognition election is made, and either (1) a current rate election was in effect for the previous year or (2) the aggregate accumulated net unrecognized section 987 loss that would be recognized by the owner as a result of the recognition election exceeds $5 million, net accumulated unrecognized section 987 loss is converted into suspended section 987 loss. *See* § 1.987–11(d)(1). As discussed in part III.A of this Explanation of Provisions, this rule is intended to prevent a taxpayer from using an annual recognition election to trigger the recognition of net unrecognized section 987 loss that arose in years before the annual recognition election was made.

XIII. Removal of the Election To Use Spot Rates in Lieu of Yearly Average Exchange Rates

As explained in part II.C of the Background section, the historic rate under § 1.987–1(c)(3) of the 2016 final regulations is equal to the yearly average exchange rate for the year in which a historic asset was acquired or a historic liability was entered into. The 2016 final regulations provide an election under § 1.987–1(c)(1)(iii) to use spot rates in lieu of yearly average exchange rates.

The Treasury Department and the IRS understand that this election may not be helpful to taxpayers, as it would increase the compliance burden of applying section 987 due to the need to track historic spot rates for each day in a taxable year on which the section 987 QBU acquires an asset or incurs a liability. In addition, the availability of this election adds to the complexity of the regulations and makes the rules more difficult for the IRS to administer. Accordingly, the proposed regulations remove the election under § 1.987–1(c)(1)(iii) to use spot rates in lieu of yearly average exchange rates.

XIV. Consolidated Groups

A. Intercompany Transactions

A section 987 QBU of a member of a consolidated group is a component of that member. Therefore, a transaction between that QBU and a different member of the same group constitutes an intercompany transaction (as defined in § 1.1502–13(b)(1)(i)) and is subject to the intercompany transaction regulations in § 1.1502–13.

The Treasury Department and the IRS have become aware that achieving single entity treatment under § 1.1502–13 may be difficult for certain intercompany transactions involving section 987 QBUs. Accordingly, to facilitate single entity treatment, the proposed regulations would treat a transaction between the section 987 QBU of one member and any other member of the same group (including a section 987 QBU of that other member) as a combination of (i) an intercompany transaction between the members, and (ii) a transfer between each section 987 QBU and its owner (*see* § 1.987–2(c)) as necessary to take into account the effect of the transaction on the assets and liabilities of each section 987 QBU.

The purpose of § 1.1502–13 is to provide rules to clearly reflect the taxable income and tax liability of a consolidated group as a whole by preventing intercompany transactions from creating, accelerating, avoiding, or deferring consolidated taxable income (CTI) or consolidated tax liability. *See* § 1.1502–13(a)(1). The matching rule in § 1.1502–13(c) (Matching Rule) is one of the principal mechanisms for achieving this goal. *See* § 1.1502–13(a)(6)(i).

The Matching Rule is a principle-based rule that redetermines the attributes of a selling member's (S) intercompany item and a buying member's (B) corresponding item to produce the effect of transactions between divisions of a single corporation (single entity treatment). *See* § 1.1502–13(a)(2). The Matching Rule also can affect the timing of these items so that, whenever possible, the effect of these items on the group's CTI and consolidated tax liability is the same as if S and B were divisions of a single corporation. *See* § 1.1502–13(c)(1)(i).

For example, assume that S sells land at a gain to B, which later sells that land at a gain to an unrelated person. To achieve the same result as if S and B were divisions of a single corporation, S does not take into account its gain or loss on the sale until B sells the land to the unrelated person, and S's and B's holding periods for the land are aggregated. *See* § 1.1502–13(a)(2), (c)(1)(ii), and (c)(2); *see also Example 1* in § 1.1502–13(c)(7)(ii)(A).

The Matching Rule relies on an alignment between S's and B's items that may be unclear in transactions involving section 987 QBUs. For example, assume that Lender (that is, S) and Borrower (that is, B) are members of a consolidated group, and Lender has a section 987 QBU (Lender QBU) whose functional currency is the euro. Lender QBU lends €100 to Borrower. If Borrower and Lender were divisions of a single corporation, the loan would be treated as a transfer from Lender QBU when funded and a transfer to Lender QBU when repaid (or when interest is paid). These transfers would be taken into account in determining the amount of a remittance from Lender QBU (potentially triggering the recognition of section 987 gain or loss), and the single corporation might recognize section 988 gain or loss when the loan is repaid. *See* §§ 1.987–5 and 1.988–1(a)(10)(ii)(A).

However, under current law, the foreign currency gain or loss of Lender and Borrower in the foregoing example does not perfectly offset in amount on the group's consolidated return. This is the case because Borrower has foreign currency gain or loss under section 988 when the loan is repaid, whereas Lender's foreign currency gain or loss under section 987 will be taken into account only when Lender QBU makes a remittance. *See* §§ 1.987–5(a) and 1.988–2(b)(6). Because these amounts are calculated at different times based on different exchange rates, and because section 988 applies to individual transactions while section 987 gain or loss is determined on a pooled basis by reference to the assets and liabilities of a section 987 QBU, achieving single entity treatment under § 1.1502–13 may be difficult. In other words, under current law, it may be difficult to ''match'' Lender's section 987 gain or loss with Borrower's section 988 gain or loss. Similar mismatches would occur with regard to transactions between section 987 QBUs of different consolidated group members.

The proposed regulations would address the matching issue in this example by treating the loan as if it were made directly between Lender and Borrower. *See* proposed § 1.1502–13(j)(9). Thus, when the loan is made, Lender QBU would be treated as transferring €100 to Lender, which in turn would be treated as lending €100 to Borrower in an intercompany transaction. The loan would be treated as a section 988 transaction with respect to both Lender and Borrower. When Borrower pays interest on the loan and repays the loan principal, Lender would be treated as transferring the interest or principal amount it receives from Borrower to Lender QBU. Lender's interest income and Borrower's interest expense, and their section 988 gain and loss with respect to principal and interest, would offset each other in amount, producing no net effect on CTI (thereby achieving single entity treatment). The group would report any foreign currency gain or loss (under section 987 or 988) on the transfers between Lender and Lender QBU (for example, when Lender QBU loans the €100 to Borrower, which is first treated as a remittance of the €100 from Lender QBU to Lender) on the group's consolidated return.

The proposed regulations also would replace Examples 4 and 15 in § 1.987–2(c)(10) with new examples in § 1.1502–13(j) to illustrate the application of the proposed rule. The new examples make clear that the proposed approach applies to reach single entity treatment for all consolidated groups, regardless of whether the taxpayer had a principal purpose of avoiding tax through the use of section 987. *Cf.* § 1.987–2(b)(3)(i) and (c)(10), Example 15 (providing that the IRS may reallocate a receivable from a section 987 QBU to its owner if a principal purpose of avoiding tax through the use of section 987 is present).

B. Separate Return Limitation Years

When a corporation joins a consolidated group, the regulations under section 1502 may limit the group's ability to use the corporation's preexisting tax attributes. For example, § 1.1502–21(c) generally restricts the group's ability to use a member's net operating loss (NOL) that arose in a year when the corporation was not a member of the group. In general, § 1.1502–21(c) allows the group to use only the portion of the NOL that does not exceed the member's ''cumulative register,'' which reflects the member's items of income, gain, deduction, and loss that have been included in the group's CTI. *See* § 1.1502–21(c)(1)(i).

Under the proposed regulations, a corporation that is the owner of a section 987 QBU may have suspended or deferred section 987 losses when it joins a consolidated group. The Treasury Department and the IRS request comments about how rules similar to the rules of § 1.1502–21(c) should apply to such losses.

XV. Section 988 Transactions of a Section 987 QBU

The temporary regulations provided special rules relating to section 988 transactions of a section 987 QBU, including transactions denominated in the owner's functional currency. Although the temporary regulations have expired, the corresponding provisions of the 2016 proposed regulations remain outstanding.

In general, under the 2016 proposed regulations, whether a transaction is a section 988 transaction is determined by reference to the section 987 QBU's functional currency, but any section 988 gain or loss is determined in the owner's functional currency. *See* § 1.987–3(b)(4)(i) of the 2016 proposed regulations. In addition, certain section 988 transactions of a section 987 QBU that are denominated in, or determined by reference to, the owner's functional currency (''specified owner functional currency transactions'') are not treated as section 988 transactions of the section 987 QBU. *See* § 1.987–3(b)(4)(ii) of the 2016 proposed regulations.

The 2016 proposed regulations further provide that section 988 gain or loss with respect to certain short-term section 988 transactions of a section 987 QBU (''qualified short-term section 988 transactions'') that are accounted for under a mark-to-market method of accounting is determined in the functional currency of the section 987 QBU, and not the functional currency of its owner. *See* § 1.987–3(b)(4)(iii) of the 2016 proposed regulations.

Under the final regulations, a transaction denominated in a currency other than the section 987 QBU's functional currency is a historic item. *See* § 1.987–1(d) and (e). However, the 2016 proposed regulations provide that a qualified short-term section 988 transaction for which section 988 gain or loss is determined by reference to the functional currency of the section 987 QBU is a marked item. *See* § 1.987–1(d)(3) of the 2016 proposed regulations.

The Treasury Department and the IRS understand that the rules of the 2016 proposed regulations relating to nonfunctional currency transactions of a section 987 QBU would increase the compliance burden on taxpayers in certain contexts (for example, where the section 987 QBU operates as a treasury center). This compliance burden could potentially be alleviated by treating all transactions (including specified owner functional currency transactions) denominated in a currency other than the functional currency of the section 987 QBU as marked items, determining whether those transactions are section 988 transactions by reference to the functional currency of the section 987 QBU, and determining the section 988 gain or loss with respect to those transactions in the functional currency of the section 987 QBU. However, the Treasury Department and the IRS are concerned that, under this approach, transactions denominated in the owner's functional currency would be treated as section 988 transactions of a section 987 QBU. Therefore, these transactions would give rise to offsetting positions in that currency, enabling taxpayers to recognize losses while deferring the offsetting gains. For example, if a section 987 QBU held assets denominated in its owner's functional currency, and the section 987 QBU's functional currency weakened against that of its owner, the section 987 QBU would have section 988 gain and the owner would have an inverse amount of section 987 loss.

The Treasury Department and the IRS request comments as to whether section 988 gain or loss on nonfunctional currency transactions (including specified owner functional currency transactions) of a section 987 QBU should be determined in the functional currency of the section 987 QBU when a current rate election or annual recognition election is in effect and, if so, what limitations should be imposed to prevent abuse. Comments are also requested on whether the definition of qualified short-term section 988 transactions should be expanded or modified, and whether other exceptions or special rules should be provided for section 987 QBUs engaged in certain activities (for example, treasury centers).

XVI. Definition of a Qualified Business Unit and an Eligible QBU

Under section 985(b), the functional currency of a qualified business unit is generally either the dollar or the currency of the economic environment in which a significant part of its activities are conducted and in which its books and records are kept. Section 985(b); § 1.985–1(b) through (c). Under section 989, a ''qualified business unit'' means a ''separate and clearly identified unit'' of a trade or business of a taxpayer, provided that the unit maintains separate books and records. Section 989(a). The regulations describe two types of qualified business units. The activities of a person may be a qualified business unit if the activities constitute a trade or business and a separate set of books and records are maintained with respect to the activities. § 1.989(a)–1(b)(2)(ii). In addition, the so called ''per se'' qualified business units include any corporation, partnership (other than a section 987 aggregate partnership), trust, or estate. § 1.989(a)–1(b)(2)(i).

A single qualified business unit may only have a single functional currency. Certain qualified business units, such as domestic corporations, are required to use the dollar as their functional currency unless otherwise provided by a ruling or administrative pronouncement. § 1.985–1(b)(1)(iii). No rulings or administrative pronouncements have been issued under this provision other than private letter rulings that can be relied on only by the specific taxpayer for whom they were issued. Accordingly, all domestic corporations are required to use the dollar as their functional currency unless they have obtained a private letter ruling specifically allowing that entity to use a different functional currency.

The Treasury Department and the IRS have become aware of uncertainty regarding whether a per se qualified business unit, such as a corporation, that has only a single trade or business for which it keeps a single set of books and records is one qualified business unit (the corporation and its single trade or business) or two qualified business units (the corporation itself being one and its single trade or business being the other). If a domestic corporation with a single trade or business for which it keeps a single set of books and records were a single qualified business unit, that would effectively mean that (absent a ruling) the functional currency of the trade or business would be required to be the dollar, even if the currency of the economic environment of the trade or business was the euro and books and records are maintained in euros; whereas another domestic corporation with an identical trade or business may be permitted to use the euro as the functional currency of the trade or business, as long as it had at least one other trade or business that uses the dollar.

To clarify that a per se qualified business unit, such as a domestic corporation, is permitted to have a single trade or business that maintains a single set of books and records, and which uses a functional currency other than the dollar, the proposed regulations modify the definition of eligible QBU. The revised definition clarifies that, if a per se QBU has only a single trade or business for which only a single set of books and records are maintained, only the trade or business (and not the entity itself) would be an eligible QBU. Proposed § 1.987–1(b)(4). The entity itself would be the owner of the eligible QBU. Proposed § 1.987–1(b)(5). As a result, if the eligible QBU has a functional currency other than the functional currency of the owner, the eligible QBU would be a section 987 QBU.

The Treasury Department and the IRS request comments on whether a similar change should be made to § 1.989(a)–1(b). Comments should also consider whether additional changes are needed in the regulations under section 985 regarding functional currency or in other provisions that reference the definition of a qualified business unit, such as § 1.904–4(f)(3)(vii).

XVII. Other Changes and Revisions

In addition to the provisions described in parts I through XVI of this Explanation of Provisions, the proposed regulations include other wording changes, additions, deletions, and organizational changes to the final regulations and the 2016 proposed regulations for purposes of clarifying, conforming, and making minor revisions.

Applicability Dates

I. Applicability Dates of the Proposed Regulations

Once finalized, the regulations (and the parts of the final regulations that are not replaced or modified by the proposed regulations) would apply to taxable years beginning after December 31, 2024. Proposed § 1.987–14(a)(1).

A taxpayer may also choose to apply the final version of the proposed regulations and the parts of the final regulations that are not replaced or modified by the proposed regulations (the ''new final regulations''), once published in the **Federal Register**, for taxable years ending after the date these regulations are published as final in the **Federal Register**. Proposed § 1.987–14(b). To choose to apply the new final regulations, the taxpayer and each member of its consolidated group and section 987 electing group must consistently apply the new final regulations in their entirety to the taxable year and all subsequent taxable years beginning on or before December 31, 2024. *Id.*

The Treasury Department and the IRS are concerned that taxpayers may terminate certain QBUs before the general applicability date of the proposed regulations to avoid the application of these rules. Accordingly, the proposed regulations would also provide an earlier applicability date for terminating QBUs to prevent taxpayers from avoiding these rules. Specifically, the new final regulations are proposed to apply to a terminating QBU on the day the section 987 QBU terminates. Proposed § 1.987–14(a)(2). The proposed regulations would define a terminating QBU as a section 987 QBU if both (1) the section 987 QBU terminates on or after November 9, 2023, or as a result of an entity classification election filed on or after November 9, 2023 and effective before November 9, 2023, and (2) neither the new final regulations nor the 2016 and 2019 section 987 regulations would apply to the section 987 QBU when it terminates but for the anti-avoidance rule in proposed § 1.987–14(a)(2). Proposed § 1.987–1(h).

In addition, if the section 987 regulations apply to a taxable year of a partnership and would not otherwise apply to the taxable year of a partner in which or with which the partnership's taxable year ends, then the section 987 regulations apply to that taxable year of the partner solely with respect to the partner's interest in the partnership and its section 987 gain or loss attributable to an eligible QBU held by the partnership.

II. Applicability Dates of the 2016 and 2019 Section 987 Regulations

The proposed regulations also provide rules regarding the applicability dates of the final regulations and temporary regulations. Section 1.987–11(a) of the 2016 final regulations generally provides that the 2016 final regulations apply to taxable years beginning on or after one year after the first day of the first taxable year following December 7, 2016. However, taxpayers could choose to apply them to an earlier taxable year as provided in § 1.987–11(b). The 2019 final regulations (other than § 1.987–12) have the same applicability date as the 2016 final regulations.

As described in part V of the Background section, following the publication of the 2016 final regulations, the Treasury Department and the IRS have issued several notices stating that future guidance would defer the applicability dates of most provisions of the final regulations and the temporary regulations. Because certain provisions that were originally deferred have since been revoked or expired, those provisions are no longer subject to deferral; other provisions were finalized in 2019 and deferral began at that time. The provisions deferred by the notices (and the respective periods for deferral) are as follows (collectively, the ''2016 and 2019 section 987 regulations''):

(i) Sections 1.861–9T(g)(2)(ii)(A)(*1*) and (g)(2)(vi); 1.985–5; 1.987–1 through 1.987–10; 1.988–1(a)(4), (a)(10)(ii), and (i); 1.988–4(b)(2); and 1.989(a)–1(b)(2)(i), (b)(4), (d)(3), and (d)(4), as contained in 26 CFR in part 1 in effect on April 1, 2017.

(ii) Sections 1.987–2T(c)(9), 1.987–4T(c)(2) and (f), and 1.987–7T, as contained in 26 CFR in part 1 in effect on April 1, 2017 (until they were revoked on May 13, 2019).

(iii) Sections 1.987–2(c)(9) and 1.987–4(c)(2) and (f), as contained in 26 CFR in part 1 in effect on April 1, 2020 (beginning on May 13, 2019).

(iv) Sections 1.987–1T (other than §§ 1.987–1T(g)(2)(i)(B) and (g)(3)(i)(H)), 1.987–3T, 1.987–6T, 1.988–1T, and 1.988–2T(i), as contained in 26 CFR in part 1 in effect on April 1, 2017 (until they expired on December 6, 2019).

Pursuant to the most recent notice, the 2016 and 2019 section 987 regulations would first apply to taxable years beginning after December 7, 2023. Notice 2022–34, 2022–34 I.R.B. 150. The deferral notices also allow taxpayers to rely on the provisions of the notices before the section 987 regulations are amended. *See id.*

Because the proposed regulations would replace or modify parts of the final regulations, the final regulations are not expected to become applicable in their current form. However, some taxpayers have chosen to apply the 2016 and 2019 section 987 regulations in accordance with § 1.987–11(b) and the deferral notices. The proposed regulations would provide rules for taxpayers who chose to apply the 2016 and 2019 section 987 regulations before the applicability date of those regulations.

Proposed § 1.987–14(c)(1) would provide that a taxpayer may choose to apply the 2016 and 2019 section 987 regulations to a taxable year beginning after December 7, 2016, and beginning on or before December 31, 2024, in certain circumstances. Specifically, the taxpayer and each member of its consolidated group and section 987 electing group would be required to first apply the 2016 and 2019 section 987 regulations to a taxable year ending before November 9, 2023. Proposed § 1.987–14(c)(1)(i). In addition, the taxpayer and each member of its consolidated group and section 987 electing group would be required to consistently apply the 2016 and 2019 section 987 regulations in their entirety to all section 987 QBUs directly or indirectly owned by the taxpayer and each member of its consolidated group and section 987 electing group on the transition date for the taxable year that includes the transition date and all subsequent taxable years before the taxable year in which the taxpayer and each member of its consolidated group and section 987 electing group rely on the proposed regulations or apply the new final regulations. Proposed § 1.987–14(c)(1)(ii). For purposes of proposed § 1.987–14(c), the term section 987 electing group does not include foreign partnerships, foreign non-grantor trusts, or foreign estates. Proposed § 1.987–14(c)(3)(ii).

If a taxpayer and each member of its consolidated group and section 987 electing group first apply the 2016 and 2019 section 987 regulations on their returns filed on or after November 9, 2023, they would be required to apply proposed § 1.987–10 in lieu of § 1.987–10 of the final regulations. Proposed § 1.987–14(c)(1)(iii)(B). For these taxpayers, proposed § 1.987–14(c)(1)(iii)(B) would provide that a taxpayer and each member of its consolidated group and section 987 electing group must transition from the previous method used to comply with section 987 using the transition rule in proposed § 1.987–10. In other words, these taxpayers would not be permitted to apply the fresh start method described in § 1.987–10 of the final regulations.

The Treasury Department and the IRS are concerned that, if the new proposed transition rule applied solely with respect to taxable years ending on or after November 9, 2023, taxpayers would effectively have the option to choose between two alternative transition methods. Taxpayers with pretransition loss could apply the transition rule of proposed § 1.987–10 (which preserves the pretransition loss), while taxpayers with pretransition gain could choose to apply the 2016 and 2109 section 987 regulations before the applicability date of the proposed regulations to take advantage of the fresh start transition method (which could eliminate the pretransition gain). Therefore, the proposed transition rule would apply to taxpayers who choose to apply the 2016 and 2019 section 987 regulations on their returns filed on or after November 9, 2023 with respect to a taxable year ending before November 9, 2023.

Proposed § 1.987–14(c)(2) describes the applicability of the 2016 and 2019 section 987 regulations to section 987 QBUs that were not directly or indirectly owned by the taxpayer on the taxpayer's transition date. Specifically, a taxpayer that is applying the 2016 and 2019 section 987 regulations to other section 987 QBUs may choose to apply the 2016 and 2019 section 987 regulations to any section 987 QBU that it did not directly or indirectly own on the transition date, provided the taxpayer applies those regulations consistently to that QBU for that taxable year and all subsequent taxable years before the taxable year in which the taxpayer relies on the proposed regulations or applies the new final regulations.

III. Applicability Dates of § 1.987–12

Section 1.987–12T was issued as part of the temporary regulations and generally applied to any deferral event (as defined in § 1.987–12T(b)(2)) or outbound loss event (as defined in § 1.987–12T(d)(2)) that occurred on or after January 6, 2017. The 2019 final regulations withdrew § 1.987–12T and finalized the proposed regulations under § 1.987–12 that cross-referenced § 1.987–12T. *See* § 1.987–12. The deferral notices did not defer the applicability dates of § 1.987–12T or § 1.987–12, nor would the proposed regulations. Accordingly, all taxpayers to whom section 987(3) applies are currently subject to § 1.987–12.

The proposed regulations would replace § 1.987–12 with certain deferral provisions generally included in proposed §§ 1.987–11 through 1.987–13. Accordingly, the proposed regulations would provide that taxpayers continue to apply § 1.987–12 until the first taxable year to which they apply the new final regulations.

IV. Reliance on the Proposed Regulations and 2016 Proposed Regulations

Taxpayers may rely on the proposed regulations (and so much of the final regulations as would not be modified by the proposed regulations) for taxable years ending after November 9, 2023, provided the taxpayer and each member of its consolidated group and section 987 electing group consistently follow the proposed regulations in their entirety and in a consistent manner.

In addition, taxpayers may rely on the parts of the 2016 proposed regulations that remain outstanding for taxable years ending after November 9, 2023, provided that both (i) the taxpayer and each member of its consolidated group and section 987 electing group consistently follow these parts in their entirety and in a consistent manner; and (ii) in that taxable year, the taxpayer follows the proposed regulations.

For the avoidance of doubt, any person relying on the proposed regulations is treated as applying them for purposes of any provision that refers to the application of the proposed regulations or any part thereof (for example, for purposes of proposed § 1.987–10(b)).

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The collections of information in the proposed regulations with respect to section 987 are in proposed §§ 1.987–1(g), 1.987–9, and 1.987–10(k). The likely respondents are individuals who file a Form 1040 and businesses that file a Form 1065, 1066, or 1120. Additionally, there is a possibility that a trust or estate that files a Form 1041 could be affected by the requirements of the proposed regulations. The IRS anticipates that the total number of respondents could be 500,[8] and that less than 1% of the total respondents would be a trust or estate filer.

The collection of information provided by proposed § 1.987–1(g) is required only when a taxpayer makes or revokes certain elections for purposes of calculating its section 987 taxable income or loss and section 987 gain or loss with respect to a section 987 QBU. In the first year to which the section 987 regulations apply to the taxpayer, or the taxpayer or a member of its consolidated group or section 987 electing group is the owner of a section 987 QBU, the taxpayer may make any section 987 election. Thereafter, the taxpayer may make or revoke a current rate election or annual recognition election only every five years and may make or revoke other elections only with the consent of the Commissioner, which may be granted with a private letter ruling. When a taxpayer makes or revokes an election, the collection of information is mandatory. The collection of information required by proposed § 1.987–1(g) will be used by the IRS for tax compliance purposes.

Proposed § 1.987–9 is intended to specify how a taxpayer satisfies its recordkeeping obligations under section 6001 with respect to section 987. The recordkeeping requirements under proposed § 1.987–9 are considered general tax records under § 1.6001–1(e). For Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (''PRA'') purposes, general tax records are already approved by OMB under 1545–0074 for individuals and under 1545–0123 for business entities, and will be approved under 1545–NEW for trust and estate filers. The IRS intends that the information collection requirements pursuant to proposed § 1.987–9 will be satisfied by the taxpayer maintaining permanent books and records that are adequate to verify its section 987 gain or loss and section 987 taxable income or loss with respect to its section 987 QBU. Specifically, with respect to each section 987 QBU, successor deferral QBU, and successor suspended loss QBU for a taxable year, as applicable, proposed § 1.987–9 requires taxpayers to maintain books and records related to the amount of the items of income, gain, deduction, or loss attributed to the section 987 QBU in the functional currency of the section 987 QBU and its owner; the adjusted balance sheet of the section 987 QBU in the functional currency of the section 987 QBU and its owner; the exchange rates used to translate items of income, gain, deduction, or loss of the section 987 QBU into the owner's functional currency and, if a spot rate convention is used, the manner in which the convention is determined; the exchange rates used to translate the assets and liabilities of the section 987 QBU into the owner's functional currency and, if a spot rate convention is used, the manner in which the convention is determined; the amount of assets and liabilities transferred by the section 987 QBU to the owner determined in the functional currency of the owner; the amount of the unrecognized section 987 gain or loss for the taxable year; the amount of the net accumulated unrecognized section 987 gain or loss at the close of the taxable year; the amount of a remittance and the remittance proportion for the taxable year; the computations required under proposed §§ 1.861–9(g) and 1.861–9T(g) for purposes of sourcing and characterizing section 987 gain or loss, deferred section 987 gain or loss, or suspended section 987 loss under proposed § 1.987–6; the cumulative suspended section 987 loss in each recognition grouping; the outstanding deferred section 987 gain or loss in each recognition grouping; and the transition information required to be determined under proposed § 1.987–10(k). These records are required for the IRS to validate that section 987 gain or loss and section 987 taxable income or loss have been properly determined.

The collection of information in proposed § 1.987–10(k) is mandatory. Specifically, proposed § 1.987–10(k) would require a taxpayer to file a ''Section 987 Transition Information'' statement with its return for the taxable year beginning on the transition date (as defined in proposed § 1.987–10(c)). The statement would contain information that is necessary for a taxpayer to transition to the proposed section 987 regulations. Specifically, the statement requires a taxpayer to provide information that is relevant to determining the taxpayer's pretransition gain or loss with respect to its section 987 QBUs. The collection of information required by proposed § 1.987–10(k) will be used by the IRS for tax compliance purposes.

The IRS intends that the information described in proposed § 1.987–1(g) will be collected by attaching a statement to a taxpayer's return (such as the appropriate Form 1040, Form 1120, Form 1065, or other appropriate form). With respect to proposed § 1.987–10(k), the IRS also intends that the collection of information will be conducted by attaching a ''Section 987 Transition Information'' statement to a return. For purposes of the PRA, the reporting burden associated with those collections of information with respect to proposed §§ 1.987–1(g) and 1.987–10(k) will be reflected in the Paperwork Reduction Act Submissions associated with those forms. The OMB Control Numbers for the forms will be approved under 1545–0074 for individuals, under 1545–0123 for business entities, and under 1545–NEW for trust and estate filers.

To the extent that a taxpayer makes or revokes an election by obtaining a private letter ruling, the reporting burden associated with those collections of information will be reflected in the Paperwork Reduction Act Submissions associated with Revenue Procedure 2023–1, IRB 2023–1 (or future revenue procedures governing private letter rulings). The OMB Control Number for the collection of information for Revenue Procedure 2023–1 is control number 1545–1522. The proposed regulation would only require taxpayers to follow the procedures under Revenue Procedure 2023–1 (or future revenue procedure governing private letter rulings) and would not change the collection requirements of the Revenue Procedure.

The attachment to a return used for making elections with respect to these proposed regulations will be used by those taxpayers making or revoking an election for the taxable year. The ''Section 987 Transition Information'' statement attached to a return will be used by all taxpayers, but generally only with respect to the taxable year in which the taxpayer transitions to these proposed regulations. In certain cases, if the taxpayer owns a QBU that terminates after November 9, 2023 and before the taxable year in which the taxpayer transitions to the proposed regulations, the ''Section 987 Transition Information'' statement must be filed for that taxable year too, but the statement would only contain information with respect to the terminating QBU. The Treasury Department and the IRS request comments on all aspects of information collection burdens related to these proposed regulations. If the IRS releases a form for the purposes of collecting this information, drafts of IRS forms will be posted for comment at *https://www.irs.gov/draftforms.*

The burden will be accounted for in 1545–0074 for individuals and in 1545–0123 for businesses. The IRS is requesting a new OMB control number

---

[8] The estimated number of respondents is based on the number of taxpayers who filed a Form 8858 in 2021 that showed that the filer: (1) owned at least one disregarded entity or branch with a functional currency different from the functional currency of the owner, and (2) indicated that the disregarded entity was a section 989 QBU. Although these estimates are likely to increase once these proposed regulations are effective, the Treasury Department and the IRS do not have data that would allow for an accurate estimate of these increases.

to account for trust and estate filers' burden, as reflected below.

A summary of paperwork burden estimates for the elections as provided in proposed § 1.987–1(g) is as follows:

Estimated number of respondents: 5.

Estimated burden per response: 1.95 hours.

Estimated frequency of response: 1 for the first year in which a taxpayer applies these regulations. After the first year, the current rate election and the annual recognition election can generally be changed only once every five years and other elections can be changed with the consent of the Commissioner.

Estimated total burden hours: 9.75 burden hours.

A summary of paperwork burden estimates for the ''section 987 transition information'' statement as provided in proposed § 1.987–10(k) is as follows:

Estimated number of respondents: 5.

Estimated burden per response: 1.95 hours.

Estimated frequency of response: 1 for the initial transition year.

Estimated total burden hours: 9.75 burden hours.

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act. Commenters are strongly encouraged to submit public comments electronically. Written comments and recommendations for the proposed information collection should be sent to *www.reginfo.gov/public/do/PRAMain,* with copies to the Internal Revenue Service. Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' then by using the search function. Submit electronic submissions for the proposed information collection to the IRS via email at *pra.comments@irs.gov* (indicate REG–132422–17 on the subject line). Comments on the collection of information should be received by February 12, 2024.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the duties of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (including underlying assumptions and methodology);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

III. Regulatory Flexibility Act

Generally, the proposed regulations affect U.S. corporations that have foreign operations. The number of small entities potentially affected by the proposed regulations is unknown; however, it is unlikely to be a substantial number because taxpayers with foreign operations are typically larger businesses. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Secretary hereby certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

IV. Section 7805(f)

Pursuant to section 7805(f), this proposed regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

V. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. The proposed regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

VI. Executive Order 13132: Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. The proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Comments and Request for Public Hearing

Before these proposed amendments to the final regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any comments submitted will be made available at *https://www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of the proposed regulations are Raphael J. Cohen, D. Peter Merkel, Jack Zhou, and Azeka J. Abramoff of the Office of Associate Chief Counsel (International); and Jeremy Aron-Dine and Julie Wang of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in their development.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices, and other guidance cited in this document are published in the Internal Revenue Bulletin or Cumulative Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Partial Withdrawal of Proposed Regulations

Under the authority of 26 U.S.C. 7805, proposed §§ 1.987–1(g)(2)(i)(B) and (C) and (g)(3)(i)(G) and (H), 1.987–3(d), 1.987–7, and 1.987–8, contained in the notice of proposed rulemaking that was published in the **Federal Register** on December 8, 2016 (81 FR 88882) is withdrawn.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ 1. The authority citation for part 1 is amended by:
■ a. Removing the entry for §§ 1.861–9 and 1.861–9T and §§ 1.861–8T through 1.861–14T;
■ b. Adding entries for §§ 1.861–8T, 1.861–9, 1.861–9T, 1.861–10T, 1.861–11T, 1.861–12T, 1.861–13T, and 1.861–14T in numerical order;
■ c. Removing the entry for §§ 1.985–0 through 1.985–5;
■ d. Adding entries for §§ 1.985–0 through 1.985–5 in numerical order;
■ e. Removing the entry for §§ 1.987–1 through 1.987–5;
■ f. Adding entries for §§ 1.987–1 through 1.987–6, 1.987–7A, 1.987–7B, 1.987–7C, and 1.987–8 through 1.987–11 in numerical order;
■ g. Revising the entry for § 1.987–12;
■ h. Adding entries for §§ 1.987–13 and 1.987–14 in numerical order;
■ i. Removing the entry for §§ 1.988–0 through 1.988–5;
■ j. Adding entries for §§ 1.988–0 through 1.988–5 and 1.989(a)–1 in numerical order.
■ k. Revising the entry for § 1.1502–13.

The revisions and additions read as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Section 1.861–8T also issued under 26 U.S.C. 863(a), 864(e), 865(i), and 7701(f).

Section 1.861–9 also issued under 26 U.S.C. 861, 863(a), 864(e), 864(e)(7), 865(i), 987, and 989(c), and 7701(f).

Section 1.861–9T also issued under 26 U.S.C. 861, 863(a), 864(e), 864(e)(7), 865(i), and 7701(f).

* * * * *

Section 1.861–10T also issued under 26 U.S.C. 863(a), 864(e), 865(i), and 7701(f).

* * * * *

Section 1.861–11T also issued under 26 U.S.C. 863(a), 864(e), 865(i), and 7701(f).

* * * * *

Section 1.861–12T also issued under 26 U.S.C. 863(a), 864(e), 865(i), and 7701(f).

* * * * *

Section 1.861–13T also issued under 26 U.S.C. 863(a), 864(e), 865(i), and 7701(f).

* * * * *

Section 1.861–14T also issued under 26 U.S.C. 863(a), 864(e), 865(i), and 7701(f).

* * * * *

Section 1.985–0 also issued under 26 U.S.C. 985.

Section 1.985–1 also issued under 26 U.S.C. 985.

Section 1.985–2 also issued under 26 U.S.C. 985.

Section 1.985–3 also issued under 26 U.S.C. 985.

Section 1.985–4 also issued under 26 U.S.C. 985.

Section 1.985–5 also issued under 26 U.S.C. 985, 987, and 989(c).

* * * * *

Section 1.987–1 also issued under 26 U.S.C. 987, 989(c), and 1502.

Section 1.987–2 also issued under 26 U.S.C. 987, 989(c), and 1502.

Section 1.987–3 also issued under 26 U.S.C. 987 and 989(c).

Section 1.987–4 also issued under 26 U.S.C. 987 and 989(c).

Section 1.987–5 also issued under 26 U.S.C. 987 and 989(c).

Section 1.987–6 also issued under 26 U.S.C. 904, 987, and 989(c).

Section 1.987–7A also issued under 26 U.S.C. 987 and 989(c).

Section 1.987–7B also issued under 26 U.S.C. 987 and 989(c).

Section 1.987–7C also issued under 26 U.S.C. 987 and 989(c).

Section 1.987–8 also issued under 26 U.S.C. 987 and 989(c).

Section 1.987–9 also issued under 26 U.S.C. 987, 989(c), and 6001.

Section 1.987–10 also issued under 26 U.S.C. 987, 989(c), and 6001.

Section 1.987–11 also issued under 26 U.S.C. 987, 989(c), and 1502.

Section 1.987–12 also issued under 26 U.S.C. 987 and 989(c).

Section 1.987–13 also issued under 26 U.S.C. 987 and 989(c).

Section 1.987–14 also issued under 26 U.S.C. 987 and 989(c).

Section 1.988–0 also issued under 26 U.S.C. 988.

Section 1.988–1 also issued under 26 U.S.C. 988 and 989(c).

Section 1.988–2 also issued under 26 U.S.C. 988.

Section 1.988–3 also issued under 26 U.S.C. 988.

Section 1.988–4 also issued under 26 U.S.C. 988 and 989(c).

Section 1.988–5 also issued under 26 U.S.C. 988.

* * * * *

Section 1.989(a)–1 also issued under 26 U.S.C. 989 and 989(c).

* * * * *

Section 1.1502–13 also issued under 26 U.S.C. 250(c), 987, 989(c), and 1502.

* * * * *

■ 2. Section 1.861–9 is amended by:
■ a. Revising paragraphs (g)(2)(ii)(A) introductory text, (g)(2)(ii)(A)(*1*), and (g)(2)(ii)(B).
■ b. Adding paragraph (g)(2)(v).

The revisions and addition read as follows:

§ 1.861–9 Allocation and apportionment of interest expense and rules for asset-based apportionment.

* * * * *

(g) * * *

(2) * * *

(ii) * * *

(A) *Tax book value method.* In the case of taxpayers using the tax book value method of apportionment, the following rules apply to determine the value of the assets of a qualified business unit (as defined in section 989(a)) of a domestic corporation with a functional currency other than the dollar.

(1) Section 987 QBU. In the case of a section 987 QBU (as defined in § 1.987–1(b)(3)), the tax book value is determined by applying the rules of paragraph (g)(2)(i) of this section and § 1.861–9T(g)(3) to the beginning-of-year and end-of-year owner functional currency amount of assets. The beginning-of-year owner functional currency amount of assets is determined by reference to the owner functional currency amount of assets computed under § 1.987–4(d)(1)(i)(B) and (e) on the last day of the preceding taxable year. The end-of-year owner functional currency amount of assets is determined by reference to the owner functional currency amount of assets computed under § 1.987–4(d)(1)(i)(A) and (e) on the last day of the current taxable year. The beginning-of-year and end-of-year owner functional currency amount of assets, as so determined within each grouping, are then averaged as provided in paragraph (g)(2)(i) of this section.

* * * * *

(B) *Fair market value method.* In the case of taxpayers using the fair market value method of apportionment, the beginning-of-year and end-of-year fair market values of branch assets within each grouping is computed in dollars and averaged as provided in this paragraph (g)(2) and § 1.861–9T(g)(2).

* * * * *

(v) *Applicability date.* Generally, paragraph (g)(2)(ii)(A)(*1*) of this section applies to taxable years beginning after December 31, 2024. However, if pursuant to § 1.987–14(b), a taxpayer chooses to apply §§ 1.987–1 through 1.987–14 to a taxable year before the first taxable year described in § 1.987–14(a)(1), then paragraph (g)(2)(ii)(A)(*1*) of this section applies to that taxable year and subsequent years.

* * * * *

§ 1.861–9T [Amended]

■ 3. Section 1.861–9T is amended by removing and reserving paragraph (g)(2)(ii) and removing paragraph (g)(2)(vi).

■ 4. Section 1.904–4 is amended by revising paragraph (c)(5)(iii)(B) to read as follows:

§ 1.904–4 Separate application of section 904 with respect to certain categories of income.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(B) *Section 987.* For special rules relating to the allocation and apportionment of foreign income taxes to section 987 items, see § 1.987–6(b)(3)(iii).

* * * * *

■ 5. Section 1.985–5 is amended by:

■ a. In paragraph (a) removing the language ''§ 1.987–1(b)(2)'' and adding the language ''§ 1.987–1(b)(3)'' in its place.

■ b. In paragraph (d)(1)(i) removing the language ''1.987–11'' and adding the language ''1.987–14'' in its place.

■ c. Revising the last sentence of paragraph (d)(2).

■ d. Removing the second sentence of paragraph (e)(1).

■ e. In paragraph (e)(4)(i) removing the language ''1.987–11'' and adding the language ''1.987–14'' in its place.

■ f. In paragraph (e)(4)(i)(C) adding the language '', cumulative suspended section 987 loss determined under § 1.987–11(b), and deferred section 987 gain or loss determined under § 1.987–12'' after ''§ 1.987–4''.

■ g. In paragraph (e)(4)(ii) removing the language ''subsequent years'' and adding the language ''subsequent taxable years'' in its place.

■ h. Revising the last sentence of paragraph (e)(4)(iii).

■ i. Revising paragraphs (f) through (g).

The revisions read as follows:

§ 1.985–5 Adjustments required upon change in functional currency.

* * * * *

(d) * * *

(2) * * * *See* §§ 1.987–5, 1.987–8, 1.987–12, and 1.987–13 for the effect of a termination of a section 987 QBU that is subject to §§ 1.987–1 through 1.987–14.

(e) * * *

(4) * * *

(iii) * * * *See* §§ 1.987–5, 1.987–8, 1.987–12, and 1.987–13 for the consequences of a termination of a section 987 QBU that is subject to §§ 1.987–1 through 1.987–14.

(f) *Example.* The provisions of this section are illustrated by the following example:

(1) *Facts.* FC, a foreign corporation, is wholly owned by DC, a domestic corporation. The Commissioner granted permission to change FC's functional currency from the British pound to the euro beginning January 1, year 2. The EUR/GBP exchange rate on December 31, year 1, is €1:£0.50.

(2) *Analysis*—(i) *Determining new functional currency basis of property and liabilities.* The following table shows how FC must convert the items on its balance sheet from the British pound to the euro on December 31, year 1.

TABLE 1 TO PARAGRAPH (f)(2)(i)—CONVERSION OF FC'S BALANCE SHEET ITEMS

	GBP	EUR
Assets:		
Cash on hand	£40,000	€80,000
Accounts Receivable	£10,000	€20,000
Inventory	£100,000	€200,000
€100,000 Euro Bond (£100,000 historical basis)	£50,000	€100,000
Fixed assets:		
Property	£200,000	€400,000
Plant	£500,000	€1,000,000
Accumulated Depreciation	(£200,000)	(€400,000)
Equipment	£1,000,000	€2,000,000
Accumulated Depreciation	(£400,000)	(€800,000)
Total Assets	£1,300,000	€2,600,000
Liabilities and Equity:		
Accounts Payable	£50,000	€100,000
Long-term Liabilities	£400,000	€800,000
Paid-in-Capital	£800,000	€1,600,000
Retained Earnings	£50,000	€100,000
Total Liabilities and Equity	£1,300,000	€2,600,000

(ii) *Exchange gain or loss on section 988 transactions.* Under paragraph (b) of this section, FC will recognize a £50,000 loss (£50,000 current value minus £100,000 historical basis) on the Euro Bond resulting from the change in functional currency because, after the change, the Euro Bond will no longer be an asset denominated in a non-functional currency. The amount of FC's retained earnings on its December 31, year 1, balance sheet reflects the £50,000 loss on the Euro Bond.

(g) *Applicability date.* Generally, this regulation applies to taxable years beginning after December 31, 2024. However, if pursuant to § 1.987–14(b), a taxpayer chooses to apply §§ 1.987–1 through 1.987–14 to a taxable year before the first taxable year described in § 1.987–14(a)(1), then this section applies to that taxable year and subsequent years.

■ 6. Section 1.987–1, as proposed to be amended by 81 FR 88882 (December 8, 2016), is further amended by:

■ a. Revising paragraph (a);

■ b. Revising the paragraph (b) heading, paragraph (b)(1) heading, paragraphs (b)(1)(i) and (ii), (2) through (5) and (7);

■ c. Revising paragraphs (c) introductory text, (c)(1)(i) and (c)(1)(ii)(A) and removing paragraph (c)(1)(iii);

■ d. Revising paragraphs (c)(2), (c)(3)(i) introductory text, (c)(3)(i)(A) through (D) and adding paragraph (c)(3)(i)(F);

■ g. Revising paragraphs (c)(3)(ii) through (iv);

■ h. Removing the introductory text in paragraph (d);

■ i. Redesignating paragraphs (d)(1) through (3) as paragraphs (d)(1)(i) through (iii);

■ j. Adding paragraph (d)(1) introductory text;

■ k. Revising newly redesignated paragraphs (d)(1)(i) and (ii);

■ l. Adding paragraph (d)(2);

■ m. Revising paragraph (e);
■ n. Adding paragraph (g) introductory text;
■ o. Revising paragraphs (g)(1) and (2);
■ p. Revising paragraph (g)(3) heading and adding (g)(3) introductory text;
■ q. Revising paragraph (g)(3)(i) heading and introductory text;
■ r. Revising paragraphs (g)(3)(i)(A) through (D), (G), and (H);
■ s. Adding paragraphs (g)(3)(i)(I) and (J);
■ t. Revising paragraph (g)(3)(ii);
■ u. Adding paragraph (g)(3)(iii);
■ v. Revising paragraphs (g)(4) and (5); and
■ w. Adding paragraph (h).

The revisions and additions read as follows:

§ 1.987–1 Scope, definitions, and special rules.

(a) *In general.* Sections 1.987–1 through 1.987–14 (the *section 987 regulations*) provide rules for determining the taxable income or loss and earnings and profits of a taxpayer with respect to a section 987 QBU. Further, the section 987 regulations provide rules for determining the timing, amount, character, and source of section 987 gain or loss recognized with respect to a section 987 QBU. This section addresses the scope of the section 987 regulations and provides certain definitions, special rules, and procedures for making elections. Section 1.987–2 provides rules for attributing assets and liabilities and items of income, gain, deduction, and loss to an eligible QBU. It also provides rules regarding the translation of items transferred to a section 987 QBU. Section 1.987–3 provides rules for determining and translating the taxable income or loss of a taxpayer with respect to a section 987 QBU. Section 1.987–4 provides rules for determining net unrecognized section 987 gain or loss. Section 1.987–5 provides rules regarding the recognition of section 987 gain or loss. It also provides rules regarding the translation of items transferred from a section 987 QBU to its owner. Section 1.987–6 provides rules regarding the character and source of section 987 gain or loss. Section 1.987–7A provides rules regarding partnerships (other than section 987 aggregate partnerships) and S corporations that own section 987 QBUs and their partners and shareholders. Section 1.987–7B provides rules regarding section 987 aggregate partnerships. Section 1.987–7C provides transition rules that apply when a partnership becomes, or ceases to be, a section 987 aggregate partnership. Section 1.987–8 provides rules regarding the termination of a section 987 QBU. Section 1.987–9 provides rules regarding the recordkeeping required under section 987. Section 1.987–10 provides transition rules. Section 1.987–11 provides rules relating to suspended losses in connection with certain elections and the loss-to-the-extent-of-gain rule. Section 1.987–12 provides rules regarding when section 987 gain or loss is deferred, as well as when such amounts are recognized. Section 1.987–13 provides rules relating to suspended section 987 loss of an owner with respect to a section 987 QBU that terminates. Section 1.987–14 provides the applicability date of the section 987 regulations.

(b) *Scope of section 987 and certain rules relating to QBUs*—(1) *Persons subject to section 987*—(i) *In general.* Except as provided in paragraphs (b)(1)(ii) and (b)(6) of this section, any person (including an individual, corporation, partnership, S corporation, non-grantor trust, or estate) is subject to the section 987 regulations.

(ii) *Inapplicability to certain entities*—(A) *In general.* Except as otherwise provided in paragraph (b)(1)(iii) of this section, section 987(3) and the section 987 regulations do not apply to foreign corporations that either are not controlled foreign corporations or that are controlled foreign corporations in which no United States shareholders own (within the meaning of section 958(a)) stock; foreign non-grantor trusts, foreign estates, or foreign partnerships (other than section 987 aggregate partnerships) if the aggregate beneficial interest or partnership interest of all U.S. persons that are beneficiaries or partners in the non-grantor trust, estate, or partnership is de minimis under paragraph (b)(1)(ii)(B) of this section; and individuals who are not United States persons.

(B) *De minimis interest in a foreign non-grantor trust, foreign estate, or foreign partnership*—(*1*) *General rules.* The total partnership interests of all U.S. persons that own (within the meaning of section 958(a)) an interest in a partnership is de minimis if their aggregate partnership interests represent less than ten percent of the capital and less than ten percent of the profits of the partnership at all times during the partnership's taxable year. The aggregate beneficial interests of all U.S. persons in a foreign non-grantor trust or foreign estate is de minimis if it constitutes less than ten percent of all of the beneficial interests. For purposes of this paragraph, a partner's interest in a partnership or partnership item and a beneficiary's interest in a non-grantor trust or estate is treated as including the interests of the partner or beneficiary and any related party (determined under section 267(b) or 707(b)).

(*2*) *Foreign partnerships.* For purposes of this paragraph (b)(1)(ii)(B), a partner's interest in the profits of a partnership is determined in accordance with the rules and principles of § 1.706–1(b)(4)(ii), and a partner's interest in the capital of a partnership is determined in accordance with the rules and principles of § 1.706–1(b)(4)(iii).

(*3*) *Foreign trusts and estates.* For purposes of this paragraph (b)(1)(ii)(B), a person holds a beneficial interest in a foreign trust or in a foreign estate if the person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution from the foreign trust or estate, or may receive, directly or indirectly, a discretionary distribution from the foreign trust. For purposes of this section, a mandatory distribution means a distribution that is required to be made pursuant to the terms of the trust's or estate's governing documents. A discretionary distribution means a distribution that is made to a person at the discretion of the trustee or a person with a limited power of appointment of such trust. The aggregate beneficial interests of all U.S. persons in a foreign non-grantor trust or foreign estate will be treated as equaling 10 percent or more of the beneficial interest in a foreign trust or a foreign estate if—

(*i*) The beneficiaries receive, directly or indirectly, only discretionary distributions from the trust and the fair market value of the currency or other property distributed, directly or indirectly, from the trust to such beneficiaries during the prior calendar year exceeds, in the aggregate, 10 percent of the value of either all of the distributions made by the trust during that year or all of the assets held by the trust at the end of that year;

(*ii*) The beneficiaries are entitled to receive, directly or indirectly, mandatory distributions from the trust or estate and the value of the beneficiaries' aggregate interest in the trust or estate, as determined under section 7520, exceeds 10 percent of the value of all the assets held by the trust; or

(*iii*) The beneficiaries are entitled to receive, directly or indirectly, mandatory distributions and may receive, directly or indirectly, discretionary distributions from the trust, and the value of the beneficiaries' aggregate interest in the trust (determined as the sum of the fair market value of all of the currency or other property distributed from the trust at the discretion of the trustee during the prior calendar year to the beneficiaries and the value of the beneficiaries' interest in the trust as determined under section 7520 at the end of that year) exceeds either 10 percent of the value of all distributions made by such trust during the prior calendar year or 10 percent of the value of all the assets held by the trust at the end of that year.

* * * * *

(2) *Application of the section 987 regulations to earnings and profits*—(i) *In general.* The rules and principles of the section 987 regulations also apply to the determination of earnings and profits, and any elections that apply pursuant to the section 987 regulations also apply for purposes of determining earnings and profits.

(ii) *Timing.* Earnings and profits are increased when section 987 gain is recognized and decreased when section 987 loss is recognized. As a result, converting net unrecognized section 987 gain or loss to deferred section 987 gain or loss or suspended section 987 loss does not affect earnings and profits because the amounts have not yet been recognized.

(3) *Definition of a section 987 QBU*—(i) *In general.* For purposes of section 987, a *section 987 QBU* is an eligible QBU that has a functional currency different from its owner. A section 987 QBU also includes the assets and liabilities of an eligible QBU that are considered under paragraph (b)(5)(ii) of this section to be a section 987 QBU of a partner in a section 987 aggregate partnership. A section 987 QBU will continue to be treated as a section 987 QBU of the owner until a sale or other termination of the section 987 QBU as described in § 1.987–8(b) and (c). *See* § 1.985–1 for rules determining the functional currency of an eligible QBU.

(ii) *Section 987 QBU grouping election*—(A) *In general.* Solely for purposes of section 987, an owner may elect to treat all section 987 QBUs with the same functional currency as a single section 987 QBU except to the extent provided in paragraph (b)(2)(ii)(B) of this section.

(B) *Special grouping rules for section 987 QBUs owned indirectly through a section 987 aggregate partnership.* An owner making the section 987 QBU grouping election treats all section 987 QBUs with the same functional currency owned indirectly through a single section 987 aggregate partnership as a single section 987 QBU. However, an owner may not treat section 987 QBUs as a single section 987 QBU if such QBUs are owned indirectly through different section 987 aggregate partnerships. Additionally, an owner may not treat section 987 QBUs that are owned both directly and indirectly through a section 987 aggregate partnership as a single section 987 QBU.

(4) *Definition of an eligible QBU*—(i) *In general.* For purposes of section 987, an *eligible QBU* means a qualified business unit that is not subject to the United States dollar approximate separate transactions method rules of § 1.985–3.

(ii) *Qualified business unit.* For purposes of this paragraph (b)(4), a qualified business unit is defined in § 1.989(a)–1(b), except that a corporation, partnership, section 987 aggregate partnership, trust, estate, or DE is not itself a qualified business unit, but the activities of such entity may be a qualified business unit if they meet the requirements of § 1.989(a)–1(b)(1) and (b)(2)(ii). For example, if a corporation is solely engaged in activities that constitute a trade or business within the meaning of § 1.989(a)–1(b)(2)(ii)(A), and the corporation maintains only one set of books and records, the activities (but not the corporation) are a qualified business unit.

(5) *Definition of an owner.* For purposes of section 987, an *owner* is any person having direct or indirect ownership in an eligible QBU (including ownership through DEs). The term *owner* does not include an eligible QBU. For example, a section 987 QBU (*QBU1*) is not an owner of another section 987 QBU (*QBU2*) even if QBU1 wholly owns the DE that owns QBU2. A person that is not subject to the section 987 regulations under paragraph (b)(1)(ii) of this section can meet the definition of an owner under this paragraph (b)(5) for purposes of applying the section 987 regulations to other persons.

(i) *Direct ownership.* A person is a direct owner of an eligible QBU if the person is the owner for Federal income tax purposes of the assets and liabilities of the eligible QBU.

(ii) *Indirect ownership.* A person that is a partner in a section 987 aggregate partnership and is allocated, under § 1.987–7B, all or a portion of the assets and liabilities of an eligible QBU of such partnership is an indirect owner of the eligible QBU.

* * * * *

(7) *Examples illustrating paragraph (b) of this section.* The following examples illustrate the principles of this paragraph (b). The following facts are assumed for purposes of the examples. U.S. Corp is a domestic corporation, has the U.S. dollar as its functional currency, and uses the calendar year as its taxable year. Except as otherwise provided: Business A and Business B are eligible QBUs and have the euro and the Japanese yen, respectively, as their functional currencies; and DE1 and DE2 are DEs, have no assets or liabilities, and conduct no activities.

(i) *Example 1*—(A) *Facts.* U.S. Corp owns Business A and all of the interests in DE1. DE1 maintains a separate set of books and records that are kept in British pounds. DE1 owns pounds and all of the stock of a foreign corporation, FC. DE1 is liable to a lender on a pound-denominated obligation that was incurred to acquire the stock of FC. The FC stock, the pounds, and the liability incurred to acquire the FC stock are recorded on DE1's separate books and records. DE1 has no other assets or liabilities and conducts no activities (other than holding the FC stock and pounds and servicing its liability).

(B) *Analysis*—(*1*) Pursuant to paragraph (b)(5) of this section, U.S. Corp is the owner of Business A because it has direct ownership of Business A, an eligible QBU. Because Business A is an eligible QBU with a functional currency that is different from the functional currency of its owner, U.S. Corp, Business A is a section 987 QBU under paragraph (b)(3)(i) of this section. As a result, U.S. Corp and its section 987 QBU, Business A, are subject to section 987.

(*2*) Holding the stock of FC and pounds and servicing a liability does not constitute a trade or business within the meaning of § 1.989(a)–1(c). Because the activities of DE1 do not constitute a trade or business within the meaning of § 1.989(a)–1(c), such activities are not an eligible QBU. In addition, pursuant to paragraph (b)(4)(ii) of this section, DE1 itself is not an eligible QBU. As a result, neither DE1 nor its activities qualify as a section 987 QBU of U.S. Corp. Therefore, neither the activities of DE1 nor DE1 itself is subject to section 987. For the foreign currency treatment of payments on DE1's pound-denominated liability, *see* § 1.988–2(b).

(ii) *Example 2*—(A) *Facts.* U.S. Corp owns all of the interests in DE1. DE1 owns Business A and all of the interests in DE2. The only activities of DE1 are Business A activities and holding the interests in DE2. DE2 owns Business B and Business C. For purposes of this example, Business B does not maintain books and records that are separate from DE2. Instead, the activities of Business B are reflected on the books and records of DE2, which are maintained in Japanese yen. In addition, Business C has the U.S. dollar as its functional currency, maintains books and records that are separate from the books and records of DE2, and is an eligible QBU.

(B) *Analysis*—(*1*) Pursuant to paragraph (b)(4)(ii) of this section, DE1 and DE2 are not eligible QBUs. Moreover, pursuant to paragraph (b)(5) of this section, DE1 is not the owner of the Business A, Business B, or Business C eligible QBUs, and DE2 is not the owner of the Business B or Business C eligible QBUs. Instead, pursuant to paragraph (b)(5) of this section, U.S. Corp is the owner of the Business A, Business B, and Business C eligible QBUs.

(*2*) Because Business A and Business B are eligible QBUs with functional currencies that are different than the functional currency of U.S. Corp, Business A and Business B are section 987 QBUs under paragraph (b)(3)(i) of this section.

(*3*) The Business C eligible QBU has the same functional currency as U.S. Corp, the U.S. dollar. Therefore, the Business C eligible QBU is not a section 987 QBU under paragraph (b)(3)(i) of this section.

(iii) *Example 3*—(A) *Facts.* U.S. Corp owns all of the interests in DE1. DE1 owns Business A and Business B. For purposes of this example, assume Business B has the euro as its functional currency.

(B) *Analysis*—(*1*) Pursuant to paragraph (b)(4)(ii) of this section, DE1 is not an eligible QBU. Moreover, pursuant to paragraph (b)(5) of this section, DE1 is not the owner of the Business A or Business B eligible QBUs. Instead, pursuant to paragraph (b)(5) of this section, U.S. Corp is the owner of the Business A and Business B eligible QBUs.

(*2*) Business A and Business B constitute two separate eligible QBUs, each with the euro as its functional currency. Accordingly, Business A and Business B are section 987 QBUs of U.S. Corp under paragraph (b)(3)(i) of this section. U.S. Corp may elect to treat Business A and Business B as a single section 987 QBU pursuant to paragraph (b)(3)(ii) of this section. If such election is made, pursuant to paragraph (b)(5) of this section, U.S. Corp would be the owner of the Business AB section 987 QBU that would include the activities of both the Business A section 987 QBU and the Business B section 987 QBU. In addition, pursuant to paragraph (b)(5) of this section, DE1 would not be treated as the owner of the Business AB section 987 QBU.

(iv) *Example 4*—(A) *Facts.* U.S. Corp and FC, an unrelated foreign corporation, are the only partners in P, a foreign partnership with the euro as its functional currency. P owns DE1 and Business A. DE1 owns Business B.

(B) *Analysis*—(*1*) P is not a section 987 aggregate partnership under paragraph (h) of this section because its partners are not related to each other within the meaning of sections 267(b) and 707(b). Therefore, pursuant to paragraph (b)(5) of this section and § 1.987–7A(b), P is the owner of Business A because it is the owner of the assets and liabilities of Business A. Because Business A is an eligible QBU with the same functional currency as its owner, P (the euro), Business A is not a section 987 QBU under paragraph (b)(3)(i) of this section.

(*2*) Pursuant to paragraph (b)(4)(ii) of this section, DE1 is not an eligible QBU. Moreover, pursuant to paragraph (b)(5) of this section and § 1.987–7A(b), P (rather than DE1) is the owner of the Business B eligible QBU. The Business B eligible QBU has a different functional currency than P. Therefore, the Business B eligible QBU is a section 987 QBU under paragraph (b)(3)(i) of this section. As a result, P and its section 987 QBU, Business B, are subject to section 987.

(v) *Example 5*—(A) *Facts.* U.S. Corp owns all of the interests in DE1. DE1 owns Business A and all of the interests in DE2. DE2 owns Business B and all of the interests in DE3, a DE. DE3 owns Business C, which is an eligible QBU with the Mexican peso as its functional currency.

(B) *Analysis.* Pursuant to paragraph (b)(4)(ii) of this section, DE1, DE2, and DE3 are not eligible QBUs. Pursuant to paragraph (b)(5) of this section, an eligible QBU is not an owner of another eligible QBU. Accordingly, the Business A eligible QBU is not the owner of the Business B eligible QBU or the Business C eligible QBU, and the Business B eligible QBU is not the owner of the Business C eligible QBU. Instead, pursuant to paragraph (b)(5) of this section, U.S. Corp is the owner of the Business A, Business B, and Business C eligible QBUs. Because each of the Business A, Business B, and Business C eligible QBUs has a different functional currency than U.S. Corp, such eligible QBUs are section 987 QBUs of U.S. Corp under paragraph (b)(3)(i) of this section.

(c) *Exchange rates.* Solely for purposes of section 987, the spot rate, the yearly average exchange rate, and the historic rate are determined as provided in paragraphs (c)(1) through (3) of this section.

(1) *Spot rate*—(i) *In general.* Except as otherwise provided in this section, the spot rate means the rate determined under the rules of § 1.988–1(d)(1), (2), and (4) on the relevant date.

(ii) *Election to use a spot rate convention*—(A) *In general—spot rate convention.* An owner may elect to use a spot rate convention that reasonably approximates the spot rate determined in paragraph (c)(1)(i) of this section. A spot rate convention may be based on the spot rate at the beginning of a reasonable period, the spot rate at the end of a reasonable period, the average of spot rates for a reasonable period, or spot and forward rates for a reasonable period. For this purpose, a reasonable period may not exceed three months. For example, in lieu of the spot rate determined in paragraph (c)(1)(i) of this section, the spot rate for all transactions during a monthly period may be determined pursuant to one of the following conventions: the spot rate at the beginning of the current month or at the end of the preceding month; the monthly average of daily spot rates for the current or preceding month; or an average of the beginning and ending spot rates for the current or preceding month. Similarly, in lieu of the spot rate determined in paragraph (c)(1)(i) of this section, the spot rate may be determined pursuant to an average of the spot rate and the 30-day forward rate on a day of the preceding month. Use of a spot rate convention that is consistent with the convention used for financial accounting purposes is generally presumed to reasonably approximate the rate in paragraph (c)(1)(i) of this section. However, the Commissioner may prescribe the spot rate as determined in paragraph (c)(1)(i) of this section or an appropriate spot rate pursuant to this paragraph (c)(1)(ii) if the Commissioner determines that the use of the convention would not clearly reflect income based on the facts and circumstances available at the time of the election. The election or revocation of a spot rate convention does not change the spot rate with respect to any day of a taxable year before the election or revocation becomes effective. See paragraph (g) of this section for rules relating to section 987 elections.

* * * * *

(2) *Yearly average exchange rate.* For purposes of section 987, the yearly average exchange rate is a rate that represents an average exchange rate for the taxable year (or, if the section 987 QBU existed for less than the full taxable year, the portion of the year during which the 987 QBU existed) computed under any reasonable method. For example, an owner may determine the yearly average exchange rate based on a daily, monthly, or quarterly averaging convention, whether weighted or unweighted, and may take

into account forward rates for a period not to exceed three months. Use of an averaging convention that is consistent with the convention used for financial accounting purposes is generally presumed to be a reasonable method. However, the Commissioner may prescribe an appropriate yearly average exchange rate if the Commissioner determines that the use of the convention would not have been expected to clearly reflect income based on the facts and circumstances available at the time of the election.

(3) *Historic rate*—(i) *In general.* Except as otherwise provided in the section 987 regulations, the historic rate is determined as described in paragraphs (c)(3)(i)(A) through (F) of this section. In a taxable year in which an annual recognition election is in effect (and a current rate election is not in effect), paragraphs (c)(3)(i)(B) and (C) of this section are applied as if § 1.987–3(c)(2)(iv)(A) and (B) were applicable.

(A) *Assets generally.* In the case of an asset other than inventory that is acquired by a section 987 QBU (including through a transfer), the historic rate is the yearly average exchange rate applicable to the year of acquisition.

(B) *Inventory under the simplified inventory method.* In the case of inventory with respect to which a taxpayer uses the simplified inventory method described in § 1.987–3(c)(2)(iv)(A), the historic rate for inventory accounted for under the last-in, first-out (*LIFO*) method of accounting is the yearly average exchange rate applicable to the year in which the inventory's LIFO layer arose. The historic rate for all other inventory of such a taxpayer is the yearly average exchange rate for the taxable year for which the determination of the historic rate for such inventory is relevant.

(C) *Inventory under the historic inventory method.* In the case of inventory with respect to which a taxpayer has elected under § 1.987–3(c)(2)(iv)(B) to use the historic inventory method, each inventoriable cost with respect to such inventory may have a different historic rate. The historic rate for each inventoriable cost is the exchange rate at which such item would be translated under § 1.987–3 if it were not an inventoriable cost.

(D) *Liabilities generally.* In the case of a liability that is incurred or assumed by a section 987 QBU, the historic rate is the yearly average exchange rate applicable to the year the liability is incurred or assumed.

* * * * *

(F) *Determination of historic rates after revocation of current rate election.* Except as provided in paragraph (c)(3)(i)(B) of this section with respect to non-LIFO inventory subject to the simplified inventory method, if a current rate election is revoked or otherwise ceases to be in effect, the historic rate of all historic items that were properly reflected on the books and records of a section 987 QBU under § 1.987–2(b) on the last day of the last taxable year to which the current rate election was in effect is the spot rate applicable to that day.

(ii) [Reserved]

(iii) *Date placed in service for depreciable or amortizable property.* In the case of depreciable or amortizable property, an owner may determine the historic rate by reference to the date such property is placed in service by the section 987 QBU rather than the date the property was acquired, provided that this convention is consistently applied for all such property attributable to that section 987 QBU.

(iv) *Changed functional currency.* In the case of a section 987 QBU or an owner of a section 987 QBU that previously changed its functional currency, § 1.985–5(d)(1)(ii)(A) and (e)(4)(i)(A), respectively, are taken into account in determining the historic rate for an item reflected on the balance sheet of the section 987 QBU immediately before the year of change.

(d) *Marked item*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, a marked item is an asset (*marked asset*) or liability (*marked liability*) that is properly reflected on the books and records of a section 987 QBU under § 1.987–2(b) and that—

(i) Is denominated in, or determined by reference to, the functional currency of the section 987 QBU, is not a section 988 transaction of the section 987 QBU, and would be a section 988 transaction if such item were held or entered into directly by the owner of the section 987 QBU; or

(ii) Is a prepaid expense or a liability for an advance payment of unearned income, in either case having an original term of one year or less on the date the prepaid expense or liability for an advance payment of unearned income arises.

* * * * *

(2) *Current rate election.* A taxpayer may elect to treat all assets and liabilities that are properly reflected on the books and records of a section 987 QBU under § 1.987–2(b) as marked items (a *current rate election*). *See* § 1.987–11(c) for rules suspending section 987 loss if a current rate election is in effect.

(e) *Historic item.* A historic item is an asset (*historic asset*) or liability (*historic liability*) that is properly reflected on the books and records of a section 987 QBU under § 1.987–2(b) and that is not a marked item.

* * * * *

(g) *Elections.* This paragraph (g) provides rules for making and revoking elections under the section 987 regulations (the *section 987 elections*). A section 987 election is made for the owner and for a taxable year and applies to every section 987 QBU owned by the owner while the election is in effect. Once made, a section 987 election remains in effect until revoked.

(1) *Persons making the election.* A section 987 election is made or revoked by the authorized person. The authorized person is described in paragraph (g)(1)(i), (ii), (iii), or (iv) of this section. If there are multiple controlling domestic shareholders, references to ''the authorized person'' refer to all authorized persons.

(i) *United States persons.* Except as provided in paragraph (g)(1)(iii) or (iv) of this section, if the owner of a section 987 QBU is a United States person, the election is made or revoked by the owner.

(ii) *CFCs and other foreign entities*—(A) *In general.* Except as provided in paragraph (g)(1)(iv) of this section, if the owner of a section 987 QBU is a controlled foreign corporation or other foreign entity, the election is made or revoked by the controlling domestic shareholders of the controlled foreign corporation or other foreign entity.

(B) *Controlling domestic shareholders.* For purposes of this paragraph (g), the controlling domestic shareholders of a controlled foreign corporation are determined under § 1.964–1(c)(5)(i) and the controlling domestic shareholders of a foreign entity other than a controlled foreign corporation are determined by applying the rules and principles of § 1.964–1(c)(5)(i) as if the foreign entity were a controlled foreign corporation and, if the entity is a trust or estate, the beneficial interests in the entity were stock.

(iii) *Consolidated groups.* If the owner is a member of a consolidated group, *see* § 1.1502–77.

(iv) *Partnerships.* If the owner of a section 987 QBU is a partnership, the election is made or revoked by the partnership. For a partnership that is not otherwise required to file a partnership return, *see* § 1.6031(a)–1(b)(5) for elections that can only be made by a partnership under section 703.

(2) *Consistency rules*—(i) *Consolidated groups.* A section 987 election is made or revoked by a

consolidated group and applies to all members of the group. Therefore, the same section 987 elections will be in effect for all members of a consolidated group at all times. If a corporation becomes a member of a consolidated group, it is deemed to make or revoke any section 987 election as necessary to be consistent with the consolidated group. If a corporation ceases to be a member of a consolidated group and does not join another group, its section 987 elections are unaffected by its departure from the group.

(ii) *United States shareholders, CFCs, foreign partnerships, foreign non-grantor trusts, and foreign estates.* If the authorized person makes or revokes an election on behalf of any person (including the authorized person) described in paragraphs (g)(2)(ii)(A) through (D) of this section (the *section 987 electing group*), then the election must be made or revoked on behalf of all members of the section 987 electing group for the first taxable year of each entity that ends with or within the taxable year of the United States person described in paragraph (g)(2)(ii)(A) of this section in which the election or revocation became effective. If an entity that was not previously a member of the section 987 electing group becomes a member (for example, upon formation or acquisition), it is deemed to make or revoke any section 987 election as necessary to be consistent with the other members (without regard to the requirements of paragraph (g)(3)(ii) of this section). The following persons are described in this paragraph (g)(2)(ii):

(A) A United States person (the *relevant United States person*).

(B) Each controlled foreign corporation in which the relevant United States person owns (within the meaning of section 958(a)) more than fifty percent (by vote or value).

(C) Each foreign partnership in which the relevant United States person owns (directly or indirectly) more than fifty percent of the capital and profits interest.

(D) Each foreign non-grantor trust or estate in which the relevant United States person's beneficial interests in the trust or estate exceed fifty percent.

(iii) *Section 381(a) transactions.* If a corporation (*acquiring corporation*) acquires the assets of another corporation in a transaction described in section 381(a), the acquiring corporation's election status applies to all section 987 QBUs owned by the acquiring corporation after the transaction.

(3) *Manner of making or revoking elections.* The section 987 elections must be made in accordance with this paragraph (g)(3), except as provided in forms and instructions or other guidance as provided by the Secretary.

(i) *Statement must be attached to a return.* An authorized person that makes or revokes a section 987 election in accordance with this paragraph (g) must attach to its return the statement described in this paragraph (g)(3)(i). Each statement must include an identification of the election that is made or revoked; the name, address, and functional currency of each owner (or if the owner is a member of a consolidated group, the common parent of the consolidated group) for which the election is made or revoked; and the name, address, functional currency, and owner of each section 987 QBU owned by each owner.

(A) *Section 987 grouping election.* The election provided in paragraph (b)(3)(ii) of this section is titled ''Section 987 Grouping Election Under § 1.987–1(b)(3)(ii)'' and must provide the name, address, and functional currency of each section 987 QBU of each owner that is being grouped together.

(B) *Election to use a spot rate convention.* An election under paragraph (c)(1)(ii) of this section to use a spot rate convention is titled ''Section 987 Election to Use a Spot Rate Convention Under § 1.987–1(c)(1)(ii)'' and must describe the convention.

(C) [Reserved]

(D) *Election to use the historic inventory method.* An election under § 1.987–3(c)(2)(iv)(B) to use the historic inventory method is titled ''Section 987 Election to Use the Historic Inventory Method Under § 1.987–3(c)(2)(iv)(B).''

* * * * *

(G) *Annual recognition election.* An annual recognition election under § 1.987–5(b)(2) is titled ''Section 987 Election for Annual Recognition Under § 1.987–5(b)(2).''

(H) *Current rate election.* A current rate election under paragraph (d)(2) of this section is titled ''Section 987 Election to Use Current Rates Under § 1.987–1(d)(2).''

(I) [Reserved]

(J) *Elections related to the transition rules.* The elections provided in § 1.987–10 are made by reporting the election on the statement described in § 1.987–10(k).

(ii) *Election requirements*—(A) *Consent required.* Except as provided in paragraph (g)(3)(ii)(B) or (C) of this section, a section 987 election may not be made or revoked without the consent of the Commissioner. A copy of the consent must be attached to the statement described in paragraph (g)(3)(i) of this section. For purposes of this paragraph (g)(3)(ii), the Commissioner's consent may be obtained only with a ruling or administrative pronouncement. *See* Revenue Procedure 2023–1, I.R.B. 2023–1 (or superseding guidance).

(B) *Current rate election and annual recognition election.* Except as provided in paragraph (g)(3)(ii)(C) of this section, the authorized person may make a current rate election or an annual recognition election without the Commissioner's consent by filing the statement prescribed in paragraph (g)(3)(i) of this section with the Internal Revenue Service in accordance with the prescribed form or its instructions (or other guidance) on or before the first day of the taxable year to which the election applies, and attaching a copy of the statement to its return. Once made, a current rate election or annual recognition election may not be revoked without the Commissioner's consent for any taxable year beginning within 60 months of the first day of the taxable year for which it was made. Once revoked, a new current rate election or annual recognition election may not be made without the Commissioner's consent for any taxable year beginning within 60 months of the first day of the taxable year for which it was revoked.

(C) *First year to which the section 987 regulations apply.* The authorized person may make a section 987 election without the consent of the Commissioner on its original, timely filed (including extensions) return for the first taxable year of the owner in which both—

(*1*) The section 987 regulations apply (other than by applying solely to one or more terminating QBUs pursuant to § 1.987–14(a)(2)); and

(*2*) Either the owner or any member of its consolidated group or section 987 electing group is the owner of a section 987 QBU.

(iii) *Elections made under the 2016 and 2019 section 987 regulations.* Each section 987 election must be made by the authorized person under the rules of this section without regard to whether the election was in effect under the 2016 and 2019 final regulations or under prior § 1.987–8T. In the first taxable year in which the section 987 regulations apply, any elections made under the 2016 and 2019 final regulations cease to be effective.

(4) *No change in method of accounting.* An election under section 987 is not governed by the general rules concerning changes in methods of accounting.

(5) *Principles of § 1.964–1(c)(3) applicable to section 987 elections.* Except as otherwise provided in this

paragraph (g), if the authorized person makes or revokes a section 987 election on behalf of a controlled foreign corporation or other foreign entity, the authorized person must make or revoke the section 987 election in accordance with the rules and principles of § 1.964–1(c)(3) (determined by treating the foreign entity as a foreign corporation if it is not one).

(h) *Definitions.* The definitions in this paragraph (h) apply for purposes of the section 987 regulations.

1991 proposed regulations. The term *1991 proposed regulations* means proposed sections 1.987–1 through 1.987–3 as contained in 56 FR 48457–01 (September 25, 1991).

2006 proposed regulations. The term *2006 proposed regulations* means: proposed sections 1.861–9T(g)(2)(ii)(A)(*1*) and (g)(2)(vi); 1.985–5; 1.987–1 through 1.987–11; 1.988–1(a)(3), (a)(4), (a)(10)(ii), and (i); 1.988–4(b)(2); and 1.989(a)–1(b)(2)(i), and (b)(4) as contained in 71 FR 52876–01 (September 7, 2006).

2016 and 2019 section 987 regulations. The term *2016 and 2019 section 987 regulations* means the following regulations:

(i) Sections 1.861–9T(g)(2)(ii)(A)(*1*) and (g)(2)(vi); 1.985–5; 1.987–1 through 1.987–10; 1.988–1(a)(4), (a)(10)(ii), and (i); 1.988–4(b)(2); and 1.989(a)–1(b)(2)(i), (b)(4), (d)(3), and (d)(4), as contained in 26 CFR in part 1 in effect on April 1, 2017.

(ii) Sections 1.987–2T(c)(9), 1.987–4T(c)(2) and (f), and 1.987–7T, as contained in 26 CFR in part 1 in effect on April 1, 2017 (until they were revoked on May 13, 2019).

(iii) Sections 1.987–2(c)(9) and 1.987–4(c)(2) and (f), as contained in 26 CFR in part 1 in effect on April 1, 2020 (beginning on May 13, 2019).

(iv) Sections 1.987–1T (other than §§ 1.987–1T(g)(2)(i)(B) and (g)(3)(i)(H)), 1.987–3T, 1.987–6T, 1.988–1T, and 1.988–2T(i), as contained in 26 CFR in part 1 in effect on April 1, 2017 (until they expired on December 6, 2019).

Adjusted balance sheet. The term *adjusted balance sheet* means a tax basis balance sheet in the functional currency of the eligible QBU, determined by—

(i) Preparing a balance sheet for the relevant date from the eligible QBU's books and records (within the meaning of § 1.989(a)–1(d)) recorded in the eligible QBU's functional currency and showing all assets and liabilities attributable to the eligible QBU as provided in § 1.987–2(b) (the *preliminary balance sheet*); and

(ii) Making adjustments necessary to conform the items reflected on the preliminary balance sheet to United States tax accounting principles.

Annual recognition election. The term *annual recognition election* has the meaning provided in § 1.987–5(b)(2).

Authorized person. The term *authorized person* has the meaning provided in paragraph (g)(1) of this section.

Combination. The term *combination* has the meaning provided in § 1.987–2(c)(9)(i).

Combined QBU. The term *combined QBU* has the meaning provided in § 1.987–2(c)(9)(i).

Combining QBU. The term *combining QBU* has the meaning provided in § 1.987–2(c)(9)(i).

Consolidated group. The term *consolidated group* has the meaning provided in § 1.1502–1(h).

Controlled group. A *controlled group* means all persons with the relationships to each other specified in sections 267(b) or 707(b).

Controlled foreign corporation. The term *controlled foreign corporation* (or *CFC*) has the meaning provided in section 957.

Cumulative suspended section 987 loss. The term *cumulative suspended section 987 loss* has the meaning provided in § 1.987–11(b).

Current rate election. The term *current rate election* has the meaning provided in § 1.987–1(d)(2).

Deferral event. The term *deferral event* has the meaning provided in § 1.987–12(g)(1).

Deferred section 987 gain or loss. The term *deferred section 987 gain or loss* has the meaning provided in § 1.987–12(b)(2).

Disregarded entity. The term *disregarded entity* (or *DE*) means an entity disregarded as an entity separate from its owner for Federal income tax purposes, including an entity described in § 301.7701–2(c)(2), a qualified subchapter S subsidiary under section 1361(b)(3), a qualified REIT subsidiary within the meaning of section 856(i)(2), and a wholly-owned grantor trust.

Disregarded transactions. The term *disregarded transactions* has the meaning provided in § 1.987–2(c)(2)(ii).

ECI. The term *ECI* means income that is effectively connected with the conduct of a trade or business within the United States.

Eligible pretransition method. The term *eligible pretransition method* has the meaning provided in § 1.987–10(e)(4).

Eligible QBU. The term *eligible QBU* has the meaning provided in paragraph (b)(4) of this section.

Historic asset. The term *historic asset* has the meaning provided in paragraph (e) of this section.

Historic item. The term *historic item* has the meaning provided in paragraph (e) of this section.

Historic liability. The term *historic liability* has the meaning provided in paragraph (e) of this section.

Historic rate. The term *historic rate* has the meaning provided in paragraph (c)(3) of this section.

Liability. The term *liability* means the amount of a liability on the adjusted balance sheet (or the amount that would be on the adjusted balance sheet if an adjusted balance sheet were prepared for that day).

Loss-to-the-extent-of-gain rule. The term *loss-to-the-extent-of-gain rule* has the meaning provided in § 1.987–11(e)(1).

Marked asset. The term *marked asset* has the meaning provided in paragraph (d) of this section.

Marked item. The term *marked item* has the meaning provided in paragraph (d) of this section.

Marked liability. The term *marked liability* has the meaning provided in paragraph (d) of this section.

Net accumulated unrecognized section 987 gain or loss. The term *net accumulated unrecognized section 987 gain or loss* has the meaning provided in § 1.987–4(c).

Net unrecognized section 987 gain or loss. The term *net unrecognized section 987 gain or loss* has the meaning provided in § 1.987–4(b).

Non-grantor trust. The term *non-grantor trust* means a trust (or the portion of a trust) that is not a grantor trust. A *grantor trust* is a trust with respect to which one or more persons are treated as owners of all or a portion of the trust under sections 671 through 679. If only a portion of a trust is treated as owned by a person, that portion is a grantor trust with respect to that person.

Original deferral QBU. The term *original deferral QBU* has the meaning provided in § 1.987–12(b).

Original deferral QBU owner. The term *original deferral QBU owner* has the meaning provided in § 1.987–12(g)(3).

Original suspended loss QBU owner. The term *original suspended loss QBU owner* has the meaning provided in § 1.987–13(l)(1).

Outbound loss event. The term *outbound loss event* has the meaning provided in § 1.987–13(h)(2).

Outbound loss QBU. The term *outbound loss QBU* has the meaning provided in § 1.987–13(h)(1).

Outbound section 987 loss. The term *outbound section 987 loss* has the meaning provided in § 1.987–13(h)(4).

Owner. The term *owner* has the meaning provided in paragraph (b)(5) of this section.

Prior § 1.987–1. The term *prior § 1.987–1* means § 1.987–1, as contained in 26 CFR in part 1 in effect on April 1, 2017.

Prior § 1.987–4. The term *prior § 1.987–4* means § 1.987–4, as contained in 26 CFR in part 1 in effect on April 1, 2017.

Prior § 1.987–5. The term *prior § 1.987–5* means § 1.987–5, as contained in 26 CFR in part 1 in effect on April 1, 2017.

Prior § 1.987–8T. The term *prior § 1.987–8T* means § 1.987–8T, as contained in 26 CFR in part 1 in effect on April 1, 2017.

Prior § 1.987–10. The term *prior § 1.987–10* means § 1.987–10, as contained in 26 CFR in part 1 in effect on April 1, 2017.

Prior § 1.987–12. The term *prior § 1.987–12* means § 1.987–12, as contained in 26 CFR in part 1 in effect on April 1, 2020.

Prior § 1.987–12T. The term *prior § 1.987–12T* means § 1.987–12T, as contained in 26 CFR in part 1 in effect on April 1, 2017.

Recognition grouping. The term *recognition grouping* has the meaning provided in § 1.987–11(f).

Remittance. The term *remittance* has the meaning provided in § 1.987–5(c).

S corporation. The term *S corporation* has the meaning provided in section 1361(a)(1).

Section 904 category. The term *section 904 category* means a separate category of income described in § 1.904–5(a)(4)(v).

Section 987 aggregate partnership—(i) *In general.* The term *section 987 aggregate partnership* means a partnership if both:

(A) All of the interests in partnership capital and profits are owned, directly or indirectly, by persons related to each other within the meaning of sections 267(b) or 707(b). For this purpose, ownership of an interest in partnership capital or profits is determined in accordance with the rules for constructive ownership provided in section 267(c), other than section 267(c)(3).

(B) The partnership has one or more eligible QBUs, at least one of which would be a section 987 QBU with respect to a partner if the partner owned the eligible QBU directly.

(ii) *Section 987 QBU of a partner.* The assets and liabilities of an eligible QBU owned through a section 987 aggregate partnership and allocated to a partner under the principles of § 1.987–7B are considered to be a section 987 QBU of such partner if the partner has a functional currency different from that of the eligible QBU.

(iii) *Certain unrelated partners disregarded.* In determining whether a partnership is a section 987 aggregate partnership, the interest of an unrelated partner is disregarded if the acquisition of such interest has as a principal purpose the avoidance of treatment as a section 987 aggregate partnership.

(iv) *Cross-reference. See* § 1.987–7A(a)(2) for a rule providing that references to "partnerships" in the section 987 regulations are treated as references to partnerships that are not section 987 aggregate partnerships, except where the context otherwise requires.

Section 987 electing group. The term *section 987 electing group* has the meaning provided in paragraph (g)(2)(ii) of this section.

Section 987 elections. The term *section 987 elections* has the meaning provided in paragraph (g) of this section.

Section 987 QBU. The term *section 987 QBU* has the meaning provided in paragraph (b)(3) of this section.

Section 987 regulations. The term *section 987 regulations* has the meaning provided in paragraph (a) of this section.

Section 987 taxable income or loss. The term *section 987 taxable income or loss* has the meaning provided in § 1.987–3(a).

Separated QBU. The term *separated QBU* has the meaning provided in § 1.987–2(c)(9)(iii).

Separation. The term *separation* has the meaning provided in § 1.987–2(c)(9)(iii).

Separation fraction. In the case of a separated QBU, the term *separation fraction* means a fraction, the numerator of which is the aggregate adjusted basis of the gross assets properly reflected on the books and records of the separated QBU immediately after the separation, and the denominator of which is the aggregate adjusted basis of the gross assets properly reflected on the books and records of all separated QBUs immediately after the separation.

Separating QBU. The term *separating QBU* has the meaning provided in § 1.987–2(c)(9)(iii).

Spot rate. The term *spot rate* has the meaning provided in paragraph (c)(1) of this section.

Successor deferral QBU. The term *successor deferral QBU* has the meaning provided in § 1.987–12(g)(2).

Successor deferral QBU owner. The term *successor deferral QBU owner* has the meaning provided in § 1.987–12(c)(1).

Successor suspended loss QBU. The term *successor suspended loss QBU* has the meaning provided in § 1.987–13(l)(2).

Successor suspended loss QBU owner. The term *successor suspended loss QBU owner* has the meaning provided in § 1.987–13(l)(3).

Suspended section 987 loss. The term *suspended section 987 loss* means section 987 loss that is subject to the limitations on recognition described in § 1.987–11(e). *See* §§ 1.987–10(e)(5), 1.987–11(c) and (d), 1.987–12(c), and 1.987–13(h) for rules regarding when net unrecognized section 987 loss or deferred section 987 loss becomes suspended section 987 loss.

Tentative tested income group. The term *tentative tested income group* has the meaning provided in § 1.987–6(b)(2)(i)(D)(*1*).

Terminating QBU. The term *terminating QBU* means a section 987 QBU, if both—(i) The section 987 QBU terminates on any date on or after November 9, 2023, or the section 987 QBU terminates as a result of an entity classification election made under § 301.7701–3 that is filed on or after November 9, 2023, and that is effective before November 9, 2023; and

(ii) When the section 987 QBU terminates, neither the section 987 regulations nor the 2016 and 2019 section 987 regulations would apply with respect to the section 987 QBU but for § 1.987–14(a)(2).

Termination. With respect to a section 987 QBU, the term *termination* has the meaning provided in § 1.987–8(b) and (c). With respect to a successor suspended loss QBU, the term *termination* has the meaning provided in § 1.987–13(j).

Transfer. The term *transfer* has the meaning provided in § 1.987–2(c).

Transition date. The term *transition date* has the meaning provided in § 1.987–10(b).

United States person. The term *United States person* (or *U.S. person*) has the meaning provided in section 7701(a)(30).

United States shareholder. The term *United States shareholder* (or *U.S. shareholder*) has the meaning provided in section 951(b) (or, if applicable, section 953(c)(1)(A)).

Yearly average exchange rate. The term *yearly average exchange rate* has the meaning provided in paragraph (c)(2) of this section.

■ 7. Section 1.987–2 is revised to read as follows:

§ 1.987–2 Attribution of items to eligible QBUs; definition of a transfer and related rules.

(a) *Scope.* This section provides rules regarding when items are attributed to eligible QBUs and when they are treated as transferred to or from section 987 QBUs. Paragraph (b) of this section provides rules for attributing assets and liabilities, and items of income, gain, deduction, and loss, to an eligible QBU. Paragraph (c) of this section defines a transfer to or from a section 987 QBU. Paragraph (d) of this section provides translation rules for transfers to a section 987 QBU. Paragraph (e) of this section provides a cross-reference relating to the treatment of section 987 QBUs owned by consolidated groups.

(b) *Attribution of items to an eligible QBU*—(1) *General rules.* Except as provided in paragraphs (b)(2) and (3) of this section, items are attributable to an eligible QBU to the extent they are reflected on the separate set of books and records, as defined in § 1.989(a)–1(d)(1) and (2), of the eligible QBU. In the case of a section 987 aggregate partnership, items reflected on the books and records of the partnership and deemed allocated to an eligible QBU of such partnership are considered to be reflected on the books and records of such eligible QBU. For purposes of this section, the term *item* refers to any asset or liability, and any item of income, gain, deduction, or loss. Items that are attributed to an eligible QBU pursuant to this section must be adjusted to conform to Federal income tax principles. Except as provided in § 1.989(a)–1(d)(3), these attribution rules apply solely for purposes of section 987. For example, the allocation and apportionment of interest expense under section 864(e) is independent of these rules.

(2) *Exceptions for non-portfolio stock, interests in partnerships, and certain acquisition indebtedness.* The following items are not considered to be on the books and records of an eligible QBU:

(i) Stock of a corporation (whether domestic or foreign), other than stock of a corporation if the owner of the eligible QBU owns less than 10 percent of the total combined voting power of all classes of stock entitled to vote and less than 10 percent of the total value of all classes of stock of such corporation. For this purpose, section 958 (other than section 958(b)(1)) applies in determining ownership of a controlled foreign corporation and section 318(a) applies in determining ownership of other corporations, except that in applying section 318(a)(2)(C), the phrase ''10 percent'' is used instead of the phrase ''50 percent.''

(ii) An interest in a partnership (whether domestic or foreign).

(iii) A liability that was incurred to acquire stock described in paragraph (b)(2)(i) of this section or that was incurred to acquire a partnership interest described in paragraph (b)(2)(ii) of this section.

(iv) Income, gain, deduction, or loss arising from the items described in paragraphs (b)(2)(i) through (iii) of this section. For example, if a dividend is received with respect to stock of a corporation described in paragraph (b)(2)(i) of this section, the dividend is excluded from the income of the eligible QBU. See also paragraph (c)(2)(ii) of this section, treating the payment as received by the owner and contributed to the eligible QBU.

(3) *Adjustments to items reflected on the books and records*—(i) *General rule.* If a principal purpose of recording (or not recording) an item on the books and records of an eligible QBU is the avoidance of Federal income tax under, or through the use of, section 987, the item must be allocated between or among the eligible QBU, the owner of such eligible QBU, and any other persons, entities (including DEs), or other QBUs within the meaning of § 1.989(a)–1(b) (including eligible QBUs) in a manner that reflects the substance of the transaction. For purposes of this paragraph (b)(3)(i), relevant factors for determining whether such Federal income tax avoidance is a principal purpose of recording (or not recording) an item on the books and records of an eligible QBU include the factors set forth in paragraphs (b)(3)(ii) and (iii) of this section. The presence or absence of any factor or factors is not determinative. The weight given to any factor (whether or not set forth in paragraphs (b)(3)(ii) and (iii) of this section) depends on the facts and circumstances.

(ii) *Factors indicating no tax avoidance.* For purposes of paragraph (b)(3)(i) of this section, factors that may indicate that recording (or not recording) an item on the books and records of an eligible QBU did not have as a principal purpose the avoidance of Federal income tax under, or through the use of, section 987 include the recording (or not recording) of an item:

(A) For a significant and bona fide business purpose;

(B) In a manner that is consistent with the economics of the underlying transaction;

(C) In accordance with generally accepted accounting principles (or similar comprehensive accounting standard);

(D) In a manner that is consistent with the treatment of similar items from year to year;

(E) In accordance with accepted conditions or practices in the particular trade or business of the eligible QBU;

(F) In a manner that is consistent with an explanation of existing internal accounting policies that is evidenced by documentation contemporaneous with the timely filing of a return for the taxable year; and

(G) As a result of a transaction between legal entities (for example, the transfer of an asset or the assumption of a liability), even if such transaction is not regarded for Federal income tax purposes (for example, a transaction between a DE and its owner).

(iii) *Factors indicating tax avoidance.* For purposes of paragraph (b)(3)(i) of this section, factors that may indicate that a principal purpose of recording (or not recording) an item on the books and records of an eligible QBU is the avoidance of Federal income tax under, or through the use of, section 987 include:

(A) The presence or absence of an item on the books and records that is the result of one or more transactions that are transitory, for example, due to a circular flow of cash or other property;

(B) The presence or absence of an item on the books and records that is the result of one or more transactions that do not have substance; and

(C) The presence or absence of an item on the books and records that results in the taxpayer (or a person related to the taxpayer within the meaning of section 267(b) or section 707(b)) having offsetting positions with respect to the functional currency of a section 987 QBU.

(4) *Assets and liabilities of a section 987 aggregate partnership or DE that are not attributed to an eligible QBU.* Neither a section 987 aggregate partnership nor a DE is an eligible QBU and, thus, neither entity can be a section 987 QBU. *See* § 1.987–1(b)(4). As a result, a section 987 aggregate partnership or DE may have assets and liabilities that are not attributed to an eligible QBU as provided under this paragraph (b) and, therefore, are not subject to section 987. For the foreign currency treatment of such assets or liabilities, *see* § 1.988–1(a)(4).

(5) *Special types of basis.* Any type of basis that does not affect the income or loss of the section 987 QBU is not considered to be on the books and records of the section 987 QBU. Thus, for example, section 743(b) basis is not considered to be on the books and records of the section 987 QBU.

(c) *Transfers to and from section 987 QBUs*—(1) *In general.* The following rules apply for purposes of determining whether there is a transfer of an asset or a liability from an owner to a section 987 QBU, or from a section 987 QBU to an owner. These rules apply solely for purposes of section 987.

(2) *Disregarded transactions*—(i) *General rule.* An asset or liability is treated as transferred to a section 987 QBU from its owner if, as a result of a disregarded transaction, such asset or liability is reflected on the books and records of (or attributed to) the section 987 QBU within the meaning of paragraph (b) of this section. Similarly, an asset or liability is treated as transferred from a section 987 QBU to its owner if, as a result of a disregarded transaction, such asset or liability is no longer reflected on the books and records of (or attributed to) the section 987 QBU within the meaning of paragraph (b) of this section.

(ii) *Definition of a disregarded transaction.* For purposes of this section, a disregarded transaction means a transaction that is not regarded for Federal income tax purposes (for example, any transaction between separate section 987 QBUs of the same owner). For purposes of this paragraph (c), a disregarded transaction is treated as including events described in paragraphs (c)(2)(ii)(A) through (E) of this section.

(A) If the recording (or not recording) of an asset or liability on the books and records of a section 987 QBU of an owner is the result of such asset or liability being removed from (or included on) the books and records of the owner or another eligible QBU of the owner, the asset or liability is treated as transferred from (or to) the owner or other eligible QBU to (or from) the section 987 QBU in a disregarded transaction (including through a DE or a section 987 aggregate partnership).

(B) If an asset or liability that was previously treated as being on the books and records of a section 987 QBU of an owner begins to be treated as being on the books and records of the owner or a separate eligible QBU of the owner as a result of the application of paragraph (b)(2) or (3) of this section, the asset or liability is treated as having been transferred from the section 987 QBU to the owner or separate eligible QBU in a disregarded transaction. If an asset or liability that was previously treated as being on the books and records of the owner or a separate eligible QBU of the same owner begins to be treated as being on the books and records of the section 987 QBU as a result of the application of paragraph (b)(2) or (3) of this section, the asset or liability is treated as transferred from the owner or separate eligible QBU to the section 987 QBU in a disregarded transaction.

(C) If an asset or liability that is attributable to a section 987 QBU within the meaning of paragraph (b) of this section is sold or exchanged (including in a nonrecognition transaction, such as an exchange under section 351) for an asset or liability that is not attributable to the section 987 QBU immediately after the sale or exchange, the sold or exchanged asset or liability that was attributable to the section 987 QBU immediately before the transaction is treated as transferred from the section 987 QBU to its owner in a disregarded transaction immediately before the sale or exchange for purposes of section 987 (including for purposes of recognizing section 987 gain or loss under § 1.987–5) and subsequently sold or exchanged by the owner.

(D) If an asset or liability of an owner of a section 987 QBU that is not attributable to a section 987 QBU within the meaning of paragraph (b) of this section is sold or exchanged (including in a nonrecognition transaction, such as an exchange under section 351) for an asset or liability that is attributable to the section 987 QBU immediately after the sale or exchange, the asset or liability that is attributable to the section 987 QBU immediately after the transaction is treated as received or assumed by the owner and transferred from the owner to the section 987 QBU in a disregarded transaction immediately after the sale or exchange for purposes of section 987 (including for purposes of recognizing section 987 gain or loss under § 1.987–5).

(E) If an asset or liability that is properly attributable to a section 987 QBU was received, assumed, or accrued in a regarded transaction (including the making or receiving of a payment) in which the related item of income, gain, deduction, or loss is not attributable to the section 987 QBU, the asset or liability is treated as though it was received, assumed, or accrued by the owner or another eligible QBU and transferred to the section 987 QBU in a disregarded transaction. Similarly, if an asset or liability that is not properly attributable to a section 987 QBU was received, assumed, or accrued in a regarded transaction (including the making or receiving of a payment) in which the related item of income, gain, deduction, or loss is attributable to the section 987 QBU, the asset or liability is treated as though it was received, assumed, or accrued by the section 987 QBU and transferred to the owner or another eligible QBU in a disregarded transaction. For example, if a section 987 QBU receives a dividend on an interest in stock that would be attributable to the section 987 QBU but for paragraph (b)(2)(i) of this section, or pays interest on a liability that would be attributable to the section 987 QBU but for paragraph (b)(2)(iii) of this section, the owner would be treated as receiving the dividend and transferring to the section 987 QBU the amount of the dividend, or the section 987 QBU would be treated as transferring to the owner the amount of the interest expense and the owner would be treated as paying the interest expense. See also paragraph (c)(7) of this section (application of general tax law principles).

(iii) *Items derived from disregarded transactions ignored.* For purposes of section 987, disregarded transactions do not give rise to items of income, gain, deduction, or loss that are taken into account in determining section 987 taxable income or loss under § 1.987–3.

(3) *Transfers of assets to and from section 987 QBUs owned through section 987 aggregate partnerships*—(i) *Contributions to section 987 aggregate partnerships.* Solely for purposes of section 987, an asset is treated as transferred by an indirect owner to a section 987 QBU of a partner to the extent the indirect owner contributes the asset to the section 987 aggregate partnership that carries on the activities of the section 987 QBU, provided that, immediately before the contribution, the asset is not reflected on the books and records of the section 987 QBU within the meaning of paragraph (b) of this section and the asset is reflected on the books and records of the section 987 QBU immediately after the contribution. For purposes of this paragraph (c)(3)(i), deemed contributions of money described under section 752 are disregarded. See paragraph (c)(4)(ii) of this section for rules governing the assumption by a partner of liabilities of a section 987 aggregate partnership.

(ii) *Distributions from section 987 aggregate partnerships.* Solely for purposes of section 987, an asset is treated as transferred from a section 987 QBU of a partner to its indirect owner to the extent the section 987 aggregate partnership that carries on the activities of the section 987 QBU distributes the asset to the indirect owner, provided that, immediately before the distribution, the asset is reflected on the books and records of the section 987 QBU within the meaning of paragraph (b) of this section, and the asset is not reflected on the books and records of the section 987 QBU immediately after the distribution. For purposes of this paragraph (c)(3)(ii), deemed distributions of money described under section 752 are disregarded. See paragraph (c)(4)(i) of this section for rules governing the assumption by a section 987 aggregate partnership of liabilities of a partner.

(4) *Transfers of liabilities to and from section 987 QBUs owned through section 987 aggregate partnerships*—(i) *Assumptions of partner liabilities.* Solely for purposes of section 987, a liability of the owner of a section 987 aggregate partnership is treated as transferred to a section 987 QBU of a partner if, and to the extent, the section 987 aggregate partnership assumes the liability, provided that, immediately before the transfer, the liability is not reflected on the books and records of the section 987 QBU within the meaning of paragraph (b) of this section, and the liability is reflected on the books and records of the section 987 QBU immediately after the transfer.

(ii) *Assumptions of section 987 aggregate partnership liabilities.* Solely for purposes of section 987, a liability of a section 987 aggregate partnership is treated as transferred from a section 987 QBU of a partner to its indirect owner if, and to the extent, the indirect owner assumes the liability of the section 987 aggregate partnership, provided that, immediately before the assumption, the liability is reflected on the books and records of the section 987 QBU within the meaning of paragraph (b) of this section, and the liability is not reflected on the books and records of the section 987 QBU immediately after the transfer.

(5) *Acquisitions and dispositions of interests in DEs and section 987 aggregate partnerships.* Solely for purposes of section 987, an asset or liability is treated as transferred to a section 987 QBU from its owner if, as a result of an acquisition (including by contribution) or disposition of an interest in a section 987 aggregate partnership or DE, the asset or liability is reflected on the books and records of the section 987 QBU. Similarly, an asset or liability is treated as transferred from a section 987 QBU to its owner if, as a result of an acquisition or disposition of an interest in a section 987 aggregate partnership or DE, the asset or liability is not reflected on the books and records of the section 987 QBU. See paragraph (c)(10)(xviii) of this section (*Example 18*) for an illustration of this rule.

(6) *Changes in form of ownership treated as terminations. See* §§ 1.987–8(b)(6) (treating a change in the form of ownership of an eligible QBU from direct ownership to indirect ownership or from indirect ownership to direct ownership as a termination) and 1.987–12(g)(1)(i)(A) (subjecting the termination to the deferral rules).

(7) *Application of general tax law principles.* General tax law principles, including the circular cash flow, step-transaction, economic substance, and substance-over-form doctrines, apply for purposes of determining whether there is a transfer of an asset or liability under this paragraph (c), including a transfer of an asset or liability pursuant to a disregarded transaction.

(8) *Interaction with § 1.988–1(a)(10). See* § 1.988–1(a)(10) for rules regarding the treatment of an intra-taxpayer transfer of a section 988 transaction.

(9) *Certain disregarded transactions not treated as transfers*—(i) *Combinations of section 987 QBUs.* The combination (a *combination*) of two or more separate section 987 QBUs (*combining QBUs*) that are directly owned by the same owner, or that are indirectly owned by the same partner through a single section 987 aggregate partnership, into one section 987 QBU (*combined QBU*) does not give rise to a transfer of any combining QBU's assets or liabilities to the owner under § 1.987–2(c). In addition, transactions between the combining QBUs occurring in the taxable year of the combination do not result in a transfer of the combining QBUs' assets or liabilities to the owner under § 1.987–2(c). For this purpose, a combination occurs when the assets and liabilities that are properly reflected on the books and records of two or more combining QBUs begin to be properly reflected on the books and records of a combined QBU and the separate existence of the combining QBUs ceases. A combination may result from any transaction or series of transactions in which the combining QBUs become a combined QBU. A combination may also result when an owner of two or more section 987 QBUs with the same functional currency becomes subject to a grouping election under § 1.987–1(b)(3)(ii) or when a section 987 QBU of an owner subject to a grouping election changes its functional currency to that of another section 987 QBU of the same owner. For purposes of determining net unrecognized section 987 gain or loss, deferred section 987 gain or loss, and cumulative suspended section 987 loss of a combined QBU, the combining QBUs are treated as having combined immediately before the beginning of the taxable year of combination. *See* §§ 1.987–4(f)(1), 1.987–11(b)(2), and 1.987–12(f)(1).

(ii) *Change in functional currency from a combination.* If, following a combination of section 987 QBUs described in paragraph (c)(9)(i) of this section, the combined section 987 QBU has a different functional currency than one or more of the combining section 987 QBUs, any such combining section 987 QBU is treated as changing its functional currency and the owner of the combined section 987 QBU must comply with the regulations under section 985 regarding the change in functional currency. *See* §§ 1.985–1(c)(6) and 1.985–5.

(iii) *Separation of section 987 QBUs.* The separation (a *separation*) of a section 987 QBU (*separating QBU*) into two or more section 987 QBUs (*separated QBUs*) that, after the separation, are directly owned by the same owner, or that are indirectly owned by the same partner through a single section 987 aggregate partnership, does not result in a transfer of the separating QBU's assets or liabilities to the owner under § 1.987–2(c). Additionally, transactions that occurred between the separating QBUs in the taxable year of the separation before the completion of the separation do not result in transfers for purposes of section 987. For this purpose, a separation occurs when the assets and liabilities that are properly reflected on the books and records of a separating QBU begin to be properly reflected on the books and records of two or more separated QBUs and each of the separated QBUs continues to perform a significant portion of the separating QBU's activities immediately after the separation. A separation may result from any transaction or series of transactions in which a separating QBU becomes two or more separated QBUs described in the preceding sentence. A separation may also result when a section 987 QBU that is subject to a grouping election under § 1.987–1(b)(3)(ii) changes its functional currency or when the grouping election is revoked. For purposes of determining net unrecognized section 987 gain or loss, deferred section 987 gain or loss, or cumulative suspended section 987 loss of a separated QBU, the separating QBU is treated as having separated immediately before the beginning of the taxable year of separation. *See* §§ 1.987–4(f)(2), 1.987–11(b)(3), and 1.987–12(f)(2).

(iv) *Special rules for successor suspended loss QBUs.* For purposes of determining whether a combination or separation has occurred with respect to a successor suspended loss QBU, the rules of paragraphs (c)(9)(i) and (iii) of this section are applied without regard to whether any of the combining QBUs, the combined QBU, the separating QBU, or the separated QBUs are section 987 QBUs. A combined QBU is a successor suspended loss QBU if either combining QBU was a successor suspended loss QBU, and a separated QBU is a successor suspended loss QBU if the separating QBU was a successor suspended loss QBU.

(10) *Examples.* The following examples illustrate the principles of this

paragraph (c). For purposes of the examples, X and Y are domestic corporations, have the U.S. dollar as their functional currencies, and use the calendar year as their taxable years. Furthermore, except as otherwise provided, Business A and Business B are eligible QBUs that have the euro and the Japanese yen, respectively, as their functional currencies, and DE1 and DE2 are DEs. For purposes of determining whether any of the transfers in these examples result in remittances, *see* § 1.987–5.

(i) *Example 1. Transfer to a directly owned section 987 QBU*—(A) *Facts.* X owns all of the interests in DE1. DE1 owns Business A, which is a section 987 QBU of X. X owns €100 that are not reflected on the books and records of Business A. Business A is in need of additional capital and, as a result, X lends the €100 to DE1 for use in Business A in exchange for a note.

(B) *Analysis*—(*1*) The loan from X to DE1 is not regarded for Federal income tax purposes (because it is an interbranch transaction) and therefore is a disregarded transaction (as defined in paragraph (c)(2)(ii) of this section). Because DE1 is a DE, the DE1 note held by X and the liability of DE1 under the note are not taken into account under this section.

(*2*) As a result of the disregarded transaction, the €100 is reflected on the books and records of Business A. Therefore, X is treated as transferring €100 to its Business A section 987 QBU for purposes of section 987. This transfer is taken into account in determining the amount of any remittance for the taxable year under § 1.987–5(c). *See* § 1.988–1(a)(10)(ii) for the application of section 988 to X as a result of the transfer of nonfunctional currency to its section 987 QBU.

(ii) *Example 2. Transfer to a directly owned section 987 QBU*—(A) *Facts.* X owns Business A and Business B, both of which are section 987 QBUs of X. X owns equipment that is used in Business A and is reflected on the books and records of Business A. Because Business A has excess manufacturing capacity and X intends to expand the manufacturing capacity of Business B, the equipment formerly used in Business A is transferred to Business B for use by Business B. As a result of the transfer, the equipment is removed from the books and records of Business A and is recorded on the books and records of Business B.

(B) *Analysis.* The transfer of the equipment from the books and records of Business A to the books and records of Business B is not regarded for Federal income tax purposes (because it is an interbranch transaction) and therefore is a disregarded transaction (as defined in paragraph (c)(2)(ii) of this section). Therefore, for purposes of section 987, the Business A section 987 QBU is treated as transferring the equipment to X, and X is subsequently treated as transferring the equipment to the Business B section 987 QBU. These transfers are taken into account in determining the amount of any remittance for the taxable year under § 1.987–5(c).

(iii) *Example 3. Intracompany sale of property between two section 987 QBUs*— (A) *Facts.* X owns all of the interests in DE1 and DE2. DE1 and DE2 own Business A and Business B, respectively, both of which are section 987 QBUs of X. DE1 owns equipment that is used in Business A and is reflected on the books and records of Business A. For business reasons, DE1 sells a portion of the equipment used in Business A to DE2 in exchange for a fair market value amount of Japanese yen. The yen used by DE2 to acquire the equipment was generated by Business B and was reflected on Business B's books and records. Following the sale, the yen and the equipment will be used in Business A and Business B, respectively. As a result of such sale, the equipment is removed from the books and records of Business A and is recorded on the books and records of Business B. Similarly, as a result of the sale, the yen is removed from the books and records of Business B and is recorded on the books and records of Business A.

(B) *Analysis*—(*1*) The sale of equipment between DE1 and DE2 is a transaction that is not regarded for Federal income tax purposes (because it is an interbranch transaction) and therefore the transaction is a disregarded transaction (as defined in paragraph (c)(2)(ii) of this section). Pursuant to paragraph (c)(2)(iii) of this section, the sale does not give rise to an item of income, gain, deduction, or loss for purposes of determining section 987 taxable income or loss under § 1.987–3. However, the yen and equipment exchanged by DE1 and DE2 in connection with the sale must be taken into account as a transfer under paragraph (c)(2)(i) of this section.

(*2*) As a result of the disregarded transaction, the equipment ceases to be reflected on the books and records of Business A and becomes reflected on the books and records of Business B. Therefore, the Business A section 987 QBU is treated as transferring the equipment to X, and X is subsequently treated as transferring the equipment to the Business B section 987 QBU.

(*3*) Additionally, as a result of the disregarded transaction, the yen currency ceases to be reflected on the books and records of Business B and becomes reflected on the books and records of Business A. Therefore, the Business B section 987 QBU is treated as transferring the yen to X, and X is subsequently treated as transferring the yen from X to the Business A section 987 QBU. The transfers among Business A, Business B and X are taken into account in determining the amount of any remittance for the taxable year under § 1.987–5(c).

(iv) through (ix) [Reserved]

(x) *Example 10. Contribution of assets to a corporation*—(A) *Facts.* X owns Business A. X forms Z, a domestic corporation, contributing 50 percent of its Business A assets and liabilities to Z in exchange for all of the stock of Z. X and Z do not file a consolidated tax return.

(B) *Analysis.* Pursuant to paragraph (b)(2) of this section, the Z stock received in exchange for 50 percent of Business A's assets and liabilities is not reflected on the books and records of, and therefore is not attributable to, Business A for purposes of section 987 immediately after the exchange. As a result, pursuant to paragraphs (c)(2)(i) and (ii) of this section, 50 percent of the assets and liabilities of Business A are treated as transferred from Business A to X in a disregarded transaction immediately before the exchange. *See* § 1.1502–13(j)(9) if X and Z file a consolidated return.

(xi) *Example 11. Circular transfers*—(A) *Facts.* X owns Business A. On December 30, year 1, Business A purports to transfer €100 to X. On January 2, year 2, X purports to transfer €50 to Business A. On January 4, year 2, X purports to transfer another €50 to Business A. As of the end of year 1, X has an unrecognized section 987 loss with respect to Business A, such that a remittance, if respected, would result in recognition of a foreign currency loss under section 987.

(B) *Analysis.* Because the transfer by Business A to X is offset by the transfers from X to Business A that occurred in close temporal proximity, the Internal Revenue Service may disregard the purported transfers to and from Business A for purposes of section 987 pursuant to general tax principles under paragraph (c)(7) of this section.

(xii) *Example 12. Transfers without substance*—(A) *Facts.* X owns Business A and Business B. On January 1, year 1, Business A purports to transfer €100 to X. On January 4, year 1, X purports to transfer €100 to Business B. The account in which Business B deposited the €100 is used to pay the operating expenses and other costs of Business A. As of the end of year 1, X has an unrecognized section 987 loss with respect to Business A, such that a remittance, if respected, would result in recognition of a foreign currency loss under section 987.

(B) *Analysis.* Because Business A continues to have use of the transferred property, the IRS may disregard the €100 purported transfer from Business A to X for purposes of section 987 pursuant to general tax principles under paragraph (c)(7) of this section.

(xiii) *Example 13. Offsetting positions in section 987 QBUs*—(A) *Facts.* X owns Business A and Business B. Business A and Business B each have the euro as its functional currency. X has not made a grouping election under § 1.987–1(b)(3)(ii). On January 1, year 1, X borrows €1,000 from a third-party lender, records the liability with respect to the borrowing on the books and records of Business A, and records the borrowed €1,000 on the books and records of Business B. On December 31, year 2, when Business A has $100 of net unrecognized section 987 loss and Business B has $100 of net unrecognized section 987 gain resulting from the change in exchange rates with respect to the liability and the €1,000, X terminates the Business A section 987 QBU.

(B) *Analysis.* Because Business A and Business B have offsetting positions in the euro, the IRS will scrutinize the transaction under paragraph (b)(3) of this section to determine if a principal purpose of recording the euro-denominated liability on the books and records of Business A and the borrowed euros on the books and records of Business B was the avoidance of tax under section 987. If such a principal purpose is present, the items must be reallocated (that is, the euros and the euro-denominated liability) between Business A, Business B, and X, under paragraph (b)(3) of this section to reflect the substance of the transaction.

(xiv) *Example 14. Offsetting positions with respect to a section 987 QBU and a section 988 transaction*—(A) *Facts.* X owns all of the interests in DE1, and DE1 owns Business A. On January 1, year 1, X borrows €1,000 from a third-party lender and records the liability with respect to the borrowing on its books and records. X contributes the €1,000 loan proceeds to DE1 and the €1,000 are reflected on the books and records of Business A. On December 31, year 2, when Business A has $100 of net unrecognized section 987 loss resulting from the change in exchange rates with respect to the €1,000 received from the borrowing, and when the euro-denominated borrowing, if repaid, would result in $100 of gain under section 988, X terminates the Business A section 987 QBU.

(B) *Analysis.* Because X and Business A have offsetting positions in the euro, the IRS will scrutinize the transaction under paragraph (b)(3) of this section to determine whether a principal purpose of recording the borrowed euros on the books and records of Business A, or not recording the corresponding euro-denominated liability on the books and records of Business A, was the avoidance of tax under section 987. If such a principal purpose is present, the items (that is, the euros and the euro-denominated liability) must be reallocated between Business A and X under paragraph (b)(3) of this section to reflect the substance of the transaction.

(xv) *Example 15. Offsetting positions with respect to a section 987 QBU and a section 988 transaction*—(A) *Facts.* X owns all of the stock of Y and all of the interests in DE1. DE1 owns Business A. X and Y do not file a consolidated return. On January 1, year 1, DE1 lends €1,000 to Y. X records the receivable with respect to the loan on Business A's books and records. On December 31, year 2, when Business A has $100 of net unrecognized section 987 gain resulting from the loan, Y repays the €1,000 liability. The repayment of the euro-denominated borrowing results in $100 of loss to Y under section 988. X claims a $100 loss on its consolidated return under section 988. Business A does not make any remittances to X in year 2, so the offsetting gain with respect to the loan receivable has not been recognized by X.

(B) *Analysis.* Y, a related party to X, and Business A have offsetting positions in the euro. The IRS will scrutinize the transaction under paragraph (b)(3) of this section to determine whether a principal purpose of recording the euro-denominated receivable on the books and records of Business A, rather than on the books and records of X, was to avoid Federal income tax under, or through the use of, section 987. If such a principal purpose is present, the euro-denominated receivable must be reallocated between Business A and X under paragraph (b)(3) of this section to reflect the substance of the transaction. Other provisions may also apply to defer or disallow the loss. *See e.g.,* § 1.1502–13(j)(9) if X and Y file a consolidated return.

(xvi) *Example 16. Loan by section 987 QBU followed by immediate distribution to owner*—(A) *Facts.* X owns all of the interests in DE1. DE1 owns Business A. On January 1, year 1, Business A borrows €1,000 from a bank. On January 2, year 1, Business A distributes the €1,000 it received from the bank to X. There are no other transfers between X and Business A during the year. At the end of the year, X has net unrecognized section 987 loss with respect to Business A such that a remittance would result in the recognition of foreign currency loss under section 987.

(B) *Analysis.* Because the proceeds from the loan to Business A are immediately transferred to X and the distribution from Business A to X could result in the recognition of section 987 loss, the IRS will scrutinize the transaction under paragraph (b)(3) of this section to determine whether a principal purpose of recording of the loan on the books and records of Business A, rather than on the books and records of X, was to avoid Federal income tax under, or through the use of, section 987. If such a principal purpose is present, the items must be reallocated to reflect the substance of the transaction, potentially including by moving the loan onto the books of X, resulting in the transfer not being taken into account for purposes of section 987 under paragraph (b)(3) of this section.

(xvii) *Example 17. Payment of interest by section 987 QBU on obligation of owner*—(A) *Facts.* X owns all of the interests in DE1. DE1 owns Business A. On January 1, X borrows €1,000 from a bank. On July 1, DE1 pays €20 in interest on X's €1,000 obligation to the bank, which is treated as a payment by Business A.

(B) *Analysis.* Under general tax law principles as provided in paragraph (c)(7) of this section, on July 1, year 1, Business A is treated for purposes of section 987 as making a transfer of €20 to X, and X is treated as making a €20 interest payment to the bank. See also paragraph (c)(2)(ii)(E) for interest payments on loans that are not attributable to a section 987 QBU pursuant to paragraph (b)(2) or (3) of this section.

(xviii) *Example 18. Sale of the interests in a DE*—(A) *Facts.* X owns all of the interests in DE1, a disregarded entity. DE1 owns Business A, which is a section 987 QBU of X. X has made a current rate election under § 1.987–1(d)(2) but not an annual recognition election under § 1.987–5(b)(2). On December 31, year 1, X sells all of the interests in DE1 to FC, an unrelated foreign corporation, for $150,000, when the exchange rate is €1=$1.2. At the time of the sale, all of DE1's assets are used in Business A and are reflected on the books and records of Business A. The assets have a basis of €100,000 and Business A has no liabilities. In year 1, X has net unrecognized section 987 gain with respect to Business A of $20,000.

(B) *Analysis*—(*1*) Under paragraph (c)(5) of this section, solely for purposes of section 987, an asset or liability is treated as transferred from a section 987 QBU to its owner if, as a result of a disposition of an interest in a DE, the asset or liability is not reflected on the books and records of the section 987 QBU. As a result of the sale of DE1, the assets of Business A are no longer reflected on the books and records of the Business A section 987 QBU. Therefore, the assets of Business A are treated as transferred from the Business A section 987 QBU to X in connection with the sale of X's interests in DE1.

(*2*) The transfer of all of Business A's assets to X under paragraph (c)(5) of this section results in a termination of the Business A section 987 QBU under § 1.987–8(b)(2) (substantially all assets transferred). Under § 1.987–5(c)(3) and § 1.987–8(e), a termination of a section 987 QBU is treated as a remittance of all the gross assets of the section 987 QBU to the owner on the date of the termination. Therefore, the owner's remittance proportion is one, and X recognizes all of its net unrecognized section 987 gain with respect to Business A, or $20,000.

(*3*) Because a current rate election was in effect, all of the assets of Business A are marked items. Therefore, under § 1.987–5(f)(2), X's basis in the assets transferred from Business A is determined by translating Business A's functional currency basis in the assets into X's functional currency at the spot rate applicable to the date of the transfer, €1=$1.2. Consequently, immediately before the sale of the interests in DE1, X's functional currency basis in Business A's assets (which Business A held with a basis of €100,000) is $120,000. X recognizes $30,000 of gain under section 1001(a) on the sale of DE1.

(d) *Translation of items transferred to a section 987 QBU*—(1) *Marked items.* The adjusted basis of a marked asset, or the amount of a marked liability, transferred to a section 987 QBU is translated into the section 987 QBU's functional currency at the spot rate applicable to the date of transfer. If, and to the extent that, exchange gain or loss is recognized on the asset or liability transferred under § 1.988–1(a)(10)(ii), the adjusted basis of the marked asset, or the amount of the marked liability, is adjusted to take into account the exchange gain or loss recognized.

(2) *Historic items.* The adjusted basis of a historic asset, or the amount of a historic liability, transferred to a section 987 QBU is translated into the section 987 QBU's functional currency at the rate provided in § 1.987–1(c)(3). If, and to the extent that, exchange gain or loss is recognized on the asset or liability transferred under § 1.988–1(a)(10)(ii), the adjusted basis of the historic asset, or the amount of the historic liability, is adjusted to take into account the exchange gain or loss recognized.

(e) *Cross-reference. See also* § 1.1502–13(j)(9) regarding the treatment of intercompany transactions involving section 987 QBUs owned by a member of a consolidated group.

■ 8. Section 1.987–3, as proposed to be amended by 81 FR 88882 (December 8, 2016), is further amended by:

■ a. Revising paragraphs (a), (b)(1), (b)(2)(i), (b)(3) and (c)(1);

■ b. Adding paragraph (c)(2) introductory text.

■ c. Revising paragraphs (c)(2)(i), (c)(2)(iii) and (iv), (c)(3), (d) and (e).

The revisions and addition read as follows:

§ 1.987–3 Determination of section 987 taxable income or loss of an owner of a section 987 QBU.

(a) *In general.* This section provides rules for determining the taxable income or loss of an owner of a section 987 QBU (*section 987 taxable income or loss*). Paragraph (b) of this section provides rules for determining items of income, gain, deduction, and loss, which generally are determined in the section 987 QBU's functional currency. Paragraph (c) of this section provides rules for translating each item determined under paragraph (b) of this section into the functional currency of the owner of the section 987 QBU, if necessary. Paragraph (d) of this section is reserved. Paragraph (e) of this section provides examples illustrating the application of the rules of this section.

(b) * * *

(1) *In general.* Except as otherwise provided in this paragraph (b), a section 987 QBU must determine each item of income, gain, deduction, or loss of such section 987 QBU in its functional currency under Federal income tax principles.

(2) * * *

(i) *In general.* Except as otherwise provided in paragraphs (b)(2)(ii) and (b)(4) of this section, an item of income, gain, deduction, or loss (or the item's components and related items, such as gross receipts and amount realized) that is denominated in (or determined by reference to) a nonfunctional currency (including the functional currency of the owner) is translated into the section 987 QBU's functional currency at the spot rate on the date such item is properly taken into account, subject to the limitation under § 1.987–1(c)(1)(ii)(B) regarding the use of a spot rate convention. Paragraphs (e)(1) and (2) of this section (*Examples 1* and *2*) illustrate the application of this paragraph (b)(2)(i).

* * * * *

(3) *Determination in the case of a section 987 QBU owned through a section 987 aggregate partnership*—(i) *In general.* Except as otherwise provided in this paragraph (b)(3), the taxable income or loss of a section 987 aggregate partnership, and the distributive share of any owner that is a partner in such partnership, are determined in accordance with the provisions of subchapter K of the Internal Revenue Code.

(ii) *Determination of each item of income, gain, deduction, or loss in the eligible QBU's functional currency.* A section 987 aggregate partnership generally must determine each item of income, gain, deduction, or loss reflected on the books and records of each of its eligible QBUs under § 1.987–2(b) in the functional currency of each such QBU.

(iii) *Allocation of items of income, gain, deduction, or loss of an eligible QBU.* A section 987 aggregate partnership must allocate the items of income, gain, deduction, or loss of each eligible QBU among its partners in accordance with each partner's distributive share of such income, gain, deduction, or loss as determined under subchapter K of the Internal Revenue Code.

(iv) *Translation of items into the owner's functional currency.* To the extent the items referred to in paragraph (b)(3)(iii) of this section are allocated to a partner, the partner must adjust the items to conform to Federal income tax principles and translate the items into the partner's functional currency, if necessary, as provided in paragraph (c) of this section.

* * * * *

(c) * * *

(1) *In general.* Except as otherwise provided in this section, the exchange rate to be used by an owner in translating an item of income, gain, deduction, or loss attributable to a section 987 QBU (or the item's components and related items, such as gross receipts, amount realized, basis, and cost of goods sold) into the owner's functional currency, if necessary, is the yearly average exchange rate for the taxable year.

(2) *Exceptions.* This paragraph (c)(2) applies to taxable years for which neither the annual recognition election nor the current rate election is in effect.

(i) *Recovery of basis with respect to historic assets.* Except as otherwise provided in this paragraph (c)(2), the exchange rate to be used by the owner in translating any recovery of basis (whether through a sale or exchange; deemed sale or exchange; cost recovery deduction such as depreciation, depletion or amortization; or otherwise) with respect to a historic asset is the historic rate for the property to which such recovery of basis is attributable.

* * * * *

(iii) [Reserved]

(iv) *Cost of goods sold computation*—(A) *General rule—simplified inventory method.* Except as otherwise provided in paragraph (c)(2)(iv)(B) of this section, cost of goods sold (*COGS*) for a taxable year is translated into the functional currency of the owner at the yearly average exchange rate for the taxable year in which the sale occurred (or the COGS was otherwise taken into account in computing taxable income) and adjusted as provided in paragraph (c)(3) of this section.

(B) *Election to use the historic inventory method.* In lieu of using the simplified inventory method described in paragraph (c)(2)(iv)(A) of this section, the owner of a section 987 QBU may elect under this paragraph (c)(2)(iv)(B) to translate inventoriable costs (including current-year inventoriable costs and costs that were capitalized into inventory in prior years) that are included in COGS at the historic rate for each such cost.

* * * * *

(3) *Adjustments to COGS required under the simplified inventory method.* This paragraph (c)(3) applies to taxable years for which neither the annual recognition election nor the current rate election is in effect.

(i) *In general.* An owner of a section 987 QBU that uses the simplified inventory method described in paragraph (c)(2)(iv)(A) of this section must make the adjustment described in paragraph (c)(3)(ii) of this section. In addition, the owner must make the adjustment described in paragraph (c)(3)(iii) of this section with respect to any inventory for which the section 987 QBU does not use the LIFO inventory method (as described in section 472) and must make the adjustment described in paragraph (c)(3)(iv) of this section with respect to any inventory for which the section 987 QBU uses the LIFO inventory method. An owner of a section 987 QBU that uses the simplified inventory method must make all of the applicable adjustments described in paragraphs (c)(3)(ii) through (iv) of this section with respect to the section 987 QBU even in taxable years in which the amount of COGS is zero.

(ii) *Adjustment for cost recovery deductions included in inventoriable costs.* The translated COGS amount computed under paragraph (c)(2)(iv)(A) of this section is increased or decreased (as appropriate) to reflect the difference between the historic rates appropriate for translating cost recovery deductions attributable to other historic assets and the exchange rate used to translate COGS under paragraph (c)(2)(iv)(A) of this section, to the extent any such cost recovery deductions are included in inventoriable costs for the taxable year. The adjustment is included as an adjustment to translated COGS computed under paragraph (c)(2)(iv)(A) of this section in full in the year to which the adjustment relates and is not allocated between COGS and ending inventory. The adjustment for each cost recovery deduction is computed as the product of:

(A) The cost recovery deduction, expressed in the functional currency of the section 987 QBU; and

(B) The exchange rate specified in paragraph (c)(2)(i) of this section for translating the cost recovery deduction (that is, the historic rate for the property to which such deduction is attributable) less the exchange rate used to translate COGS under the simplified inventory method described in paragraph (c)(2)(iv)(A) of this section (that is, the yearly average exchange rate for the taxable year).

(iii) *Adjustment to beginning inventory for non-LIFO inventory.* In the case of inventory with respect to which a section 987 QBU does not use the LIFO inventory method (*non-LIFO inventory*), the translated COGS amount computed under paragraph (c)(2)(iv)(A) of this section is increased or decreased (as appropriate) by the product of:

(A) The ending non-LIFO inventory included on the closing balance sheet for the preceding year, expressed in the functional currency of the section 987 QBU; and

(B) The exchange rate described in §§ 1.987–4(e)(2)(ii) and 1.987–1(c)(3)(i)(B) that is used for translating ending inventory on the closing balance sheet for the preceding year (which is generally the yearly average exchange rate for the preceding year) less the exchange rate used to translate COGS under paragraph (c)(2)(iv)(A) of this section (that is, the yearly average exchange rate for the taxable year). For purposes of this paragraph (c)(3)(iii)(B), in the first taxable year in which a current rate election is revoked or otherwise ceases to be in effect, the exchange rate that is used for translating ending inventory on the closing balance sheet for the preceding year is deemed to be equal to the spot rate applicable to the last day of the preceding taxable year.

(iv) *Adjustment for year of LIFO liquidation.* In the case of inventory with respect to which a section 987 QBU uses the LIFO inventory method, for each LIFO layer liquidated in whole or in part during the taxable year, the translated COGS amount computed under paragraph (c)(2)(iv)(A) of this section is increased or decreased (as appropriate) by the product of:

(A) The amount of the LIFO layer liquidated during the taxable year, expressed in the functional currency of the section 987 QBU; and

(B) The exchange rate described in §§ 1.987–4(e)(2)(ii) and 1.987–1(c)(3)(i)(B) or (F) that is used for translating such LIFO layer (which is generally the yearly average exchange rate for the year such LIFO layer arose) less the exchange rate used to translate COGS under paragraph (c)(2)(iv)(A) of this section (that is, the yearly average exchange rate for the taxable year).

(d) [Reserved]

(e) *Examples.* The following examples illustrate the application of this section. For purposes of the examples, U.S. Corp is a domestic corporation that uses the calendar year as its taxable year and has the U.S. dollar as its functional currency. Except as otherwise indicated, U.S. Corp is the owner of Business A, a section 987 QBU with the euro as its functional currency, and elects under paragraph (c)(2)(iv)(B) of this section to use the historic inventory method with respect to Business A but does not make any other elections under section 987. Exchange rates used in these examples are selected for the purpose of illustrating the principles of this section. No inference (for example, whether a currency is hyperinflationary or not) is intended by their use.

(1) *Example 1.* Business A accrues £100 of income from the provision of services. Under paragraph (b)(2)(i) of this section, the £100 is translated into €90 at the spot rate on the date of accrual, without the use of a spot rate convention. In determining U.S. Corp's taxable income, the €90 of income is translated into dollars at the rate provided in paragraph (c)(1) of this section.

(2) *Example 2.* Business A sells a historic asset consisting of non-inventory property for £100. Under paragraph (b)(2)(i) of this section, the £100 amount realized is translated into €85 at the spot rate on the sale date without the use of a spot rate

convention. In determining U.S. Corp's taxable income, the €85 is translated into dollars at the rate provided in paragraph (c)(1) of this section. The euro basis of the property is translated into dollars at the rate provided in paragraph (c)(2)(i) of this section (that is, the historic rate).

(3) *Example 3*—(i) *Facts.* Business A uses a first-in, first-out (*FIFO*) method of accounting for inventory. Business A sells 1,200 units of inventory in year 2 for €3 per unit. Business A's gross sales are translated under paragraph (c)(1) of this section at the yearly average exchange rate for the year of the sale. The yearly average exchange rate is €1 = $1.02 for year 1 and €1 = $1.05 for year 2.

(ii) *Analysis*—(A) Business A's dollar gross sales will be computed as follows:

TABLE 1 TO PARAGRAPH (e)(3)(ii)(A)—GROSS SALES

[Year 2]

Month	Number of units	Amount in €	€/$ yearly average rate	Amount in $
Jan	100	300	€1 = $1.05	315.00
Feb	200	600	€1 = $1.05	630.00
March	0	0	€1 = $1.05	0.00
April	200	600	€1 = $1.05	630.00
May	100	300	€1 = $1.05	315.00
June	0	0	€1 = $1.05	0.00
July	100	300	€1 = $1.05	315.00
Aug	100	300	€1 = $1.05	315.00
Sept	0	0	€1 = $1.05	0.00
Oct	0	0	€1 = $1.05	0.00
Nov	100	300	€1 = $1.05	315.00
Dec	300	900	€1 = $1.05	945.00
	1,200			$3,780.00

(B) The purchase price for each inventory unit was €1.50. Under § 1.987–1(c)(3)(i) and paragraph (c)(2)(iv)(B) of this section, the basis of each item of inventory is translated into dollars at the yearly average exchange rate for the year the inventory was acquired.

TABLE 2 TO PARAGRAPH (e)(3)(ii)(B)—OPENING INVENTORY AND PURCHASES

[Year 2]

Month	Number of units	Amount in €	€/$ yearly average rate	Amount in $
Opening inventory (purchased in Dec. year 1)	100	150	€1 = $1.02	153.00
Purchases in year 2				
Jan	300	450	€1 = $1.05	472.50
Feb	0	0	€1 = $1.05	0
March	0	0	€1 = $1.05	0
April	300	450	€1 = $1.05	472.50
May	0	0	€1 = $1.05	0
June	0	0	€1 = $1.05	0
July	300	450	€1 = $1.05	472.50
Aug	0	0	€1 = $1.05	0
Sept	0	0	€1 = $1.05	0
Oct	0	0	€1 = $1.05	0
Nov	300	450	€1 = $1.05	472.50
Dec	0	0	€1 = $1.05	0
	1,200			1,890.00

(C) Because Business A uses a FIFO method for inventory, Business A is considered to have sold in year 2 the 100 units of opening inventory purchased in year 1 ($153.00), the 300 units purchased in January year 2 ($472.50), the 300 units purchased in April year 2 ($472.50), the 300 units purchased in July year 2 ($472.50), and 200 of the 300 units purchased in November year 2 ($315.00). Accordingly, Business A's translated dollar COGS for year 2 is $1,885.50. Business A's opening inventory for year 3 is 100 units of inventory with a translated dollar basis of $157.50.

(D) Accordingly, for purposes of section 987, Business A has gross income in dollars of $1,894.50 ($3,780.00—$1,885.50) for year 2.

(4) [Reserved]

(5) *Example 5.* The facts are the same as in paragraph (e)(3) of this section (*Example 3*) except that during year 2, Business A incurred €100 of depreciation expense with respect to a truck. No portion of the depreciation expense is an inventoriable cost. The truck was purchased on January 15, year 1. The yearly average exchange rate for year 1 was €1 = $1.02. Under paragraph (c)(2)(i) of this section, the €100 of depreciation is translated into dollars at the historic rate. The historic rate is the yearly average exchange rate for year 1. Accordingly, U.S. Corp takes into account depreciation of $102 with respect to Business A in year 2.

(6) *Example 6.* The facts are the same as in paragraph (e)(5) of this section

(*Example 5*) except that the €100 of depreciation expense incurred during year 2 with respect to the truck is an inventoriable cost. As a result, the depreciation expense is capitalized into the 1,200 units of inventory purchased by Business A in year 2. Of those 1,200 units, 1,100 units are sold during the year, and 100 units become ending inventory. The portion of depreciation expense capitalized into inventory that is sold during year 2 is reflected in Business A's euro COGS and is translated at the €1 = $1.02 yearly average exchange rate for year 1, the year in which the truck was purchased. The portion of the depreciation expense capitalized into the 100 units of ending inventory is not taken into account in year 2 but rather, will be taken into account in the year the ending inventory is sold, translated at the €1 = $1.02 yearly average exchange rate for year 1.

(7) *Example 7.* Business A purchased raw land on October 16, year 1, for €8,000 and sold the land on November 1, year 2, for €10,000. The yearly average exchange rate was €1 = $1.02 for year 1 and €1 = $1.05 for year 2. Under paragraph (c)(1) of this section, the amount realized is translated into dollars at the yearly average exchange rate for year 2 (€10,000 × $1.05 = $10,500). Under paragraph (c)(2)(i) of this section, the basis is determined at the historic rate for year 1, which is the yearly average exchange rate under section § 1.987–1(c)(3)(i) for such year (€8,000 × $1.02 = $8,160). Accordingly, the amount of gain reported by U.S. Corp on the sale of the land is $2,340 ($10,500—$8,160).

(8) *Example 8.* The facts are the same as in paragraph (e)(7) of this section (*Example 7*), except that U.S. Corp makes a current rate election under § 1.987–1(d)(2). Under paragraph (c)(2) of this section, none of the exceptions to paragraph (c)(1) of this section apply in a taxable year for which an annual recognition election or a current rate election is in effect. As a result, all items of income, gain, deduction, and loss with respect to Business A are translated into U.S Corp's functional currency at the yearly average exchange rate under paragraph (c)(1) of this section. Business A's gain on the sale of the land is determined in its functional currency and is equal to €2,000 (amount realized of €10,000 less basis of €8,000). This gain is translated at the yearly average exchange rate for year 2 of €1 = $1.05, and the amount of gain reported by U.S. Corp on the sale of the land is $2,100. The result would be the same if U.S. Corp made an annual recognition election under § 1.987–5(b)(2).

■ 9. Section 1.987–4 is revised to read as follows:

§ 1.987–4 Determination of net unrecognized section 987 gain or loss of a section 987 QBU.

(a) *In general.* The net unrecognized section 987 gain or loss of a section 987 QBU is determined by the owner annually as provided in paragraph (b) of this section in the owner's functional currency. Only assets and liabilities reflected on the books and records of the section 987 QBU under § 1.987–2(b) are taken into account.

(b) *Calculation of net unrecognized section 987 gain or loss.* Net unrecognized section 987 gain or loss of a section 987 QBU for a taxable year equals the sum of:

(1) The section 987 QBU's net accumulated unrecognized section 987 gain or loss for all prior taxable years as determined in paragraph (c) of this section; and

(2) The section 987 QBU's unrecognized section 987 gain or loss for the current taxable year as determined in paragraph (d) of this section.

(c) *Net accumulated unrecognized section 987 gain or loss for all prior taxable years*—(1) *In general.* A section 987 QBU's net accumulated unrecognized section 987 gain or loss for all prior taxable years is the aggregate of the amounts determined under § 1.987–4(d) for all prior taxable years to which this section applies, reduced (without duplication) by amounts recognized under § 1.987–5(a), amounts treated as deferred section 987 gain or loss, and amounts treated as suspended section 987 loss for all prior taxable years to which this section applies.

(2) *Additional adjustments for certain taxable years beginning on or before December 31, 2024.* For any section 987 QBU in existence before the transition date, *see* § 1.987–10(e)(5) and (f)(2) for additional adjustments to the section 987 QBU's net accumulated unrecognized section 987 gain or loss.

(d) *Calculation of unrecognized section 987 gain or loss for a taxable year.* The unrecognized section 987 gain or loss of a section 987 QBU for a taxable year is generally determined under paragraphs (d)(1) through (10) of this section. However, for taxable years in which a current rate election or an annual recognition election is in effect, the unrecognized section 987 gain or loss of a section 987 QBU for a taxable year is determined by only applying paragraphs (d)(1) through (5) and (10) of this section.

(1) *Step 1: Determine the change in the owner functional currency net value of the section 987 QBU for the taxable year*—(i) *In general.* The change in the owner functional currency net value of the section 987 QBU for the taxable year equals—

(A) The owner functional currency net value of the section 987 QBU, determined in the functional currency of the owner under paragraph (e) of this section, on the last day of the taxable year; less

(B) The owner functional currency net value of the section 987 QBU, determined in the functional currency of the owner under paragraph (e) of this section, on the last day of the preceding taxable year.

(ii) *Year section 987 QBU is terminated.* If a section 987 QBU is terminated within the meaning of § 1.987–8 during an owner's taxable year, the owner functional currency net value of the section 987 QBU described in paragraph (d)(1)(i)(A) of this section is determined on the date the section 987 QBU is terminated.

(iii) *First taxable year of a section 987 QBU.* If the owner's taxable year is the first taxable year of a section 987 QBU, the owner functional currency net value of the section 987 QBU described in paragraph (d)(1)(i)(B) of this section is zero.

(iv) *First year in which an election is in effect or ceases to be in effect.* Except as otherwise provided, the owner functional currency net value of the section 987 QBU described in paragraph (d)(1)(i)(B) of this section is determined based on the elections that were (or were not) in effect on the last day of the preceding taxable year.

(2) *Step 2: Increase the amount determined in step 1 by the amount of assets transferred from the section 987 QBU to the owner*—(i) *In general.* The amount determined in paragraph (d)(1) of this section is increased by the total amount of assets transferred from the section 987 QBU to the owner during the taxable year translated into the functional currency of the owner as provided in paragraph (d)(2)(ii) of this section.

(ii) *Assets transferred from the section 987 QBU to the owner during the taxable year.* The total amount of assets transferred from the section 987 QBU to the owner for the taxable year translated into the functional currency of the owner equals the sum of:

(A) The amount of the functional currency of the section 987 QBU and the aggregate adjusted basis of all marked assets, after taking into account § 1.988–1(a)(10), transferred to the owner during the taxable year determined in the functional currency of the section 987 QBU and translated into the functional currency of the owner at the spot rate applicable to the date of transfer; and

(B) The aggregate adjusted basis of all historic assets, after taking into account § 1.988–1(a)(10), transferred to the owner during the taxable year determined in the functional currency of the section 987 QBU and translated into the functional currency of the owner at the historic rate for each such asset.

(3) *Step 3: Decrease the amount determined in steps 1 and 2 by the amount of assets transferred from the owner to the section 987 QBU*—(i) *In general.* The aggregate amount determined in paragraphs (d)(1) and (2) of this section is decreased by the total amount of assets transferred from the owner to the section 987 QBU during the taxable year determined in the functional currency of the owner as provided in paragraph (d)(3)(ii) of this section.

(ii) *Assets transferred from the owner to the section 987 QBU during the taxable year.* The total amount of assets transferred from the owner to the section 987 QBU for the taxable year equals the sum of:

(A) The amount of functional currency of the owner transferred to the section 987 QBU during the taxable year; and

(B) The aggregate adjusted basis of all assets, after taking into account § 1.988–1(a)(10), transferred to the section 987 QBU during the taxable year determined in the functional currency of the owner immediately before the transfer.

(4) *Step 4: Decrease the amount determined in steps 1 through 3 by the amount of liabilities transferred from the section 987 QBU to the owner*—(i) *In general.* The aggregate amount determined in paragraphs (d)(1) through (3) of this section is decreased by the total amount of liabilities transferred from the section 987 QBU to the owner during the taxable year translated into the functional currency of the owner as provided in paragraph (d)(4)(ii) of this section.

(ii) *Liabilities transferred from the section 987 QBU to the owner during the taxable year.* The total amount of liabilities transferred from the section 987 QBU to the owner for the taxable year equals the sum of:

(A) The amount of marked liabilities transferred to the owner during the taxable year determined in the functional currency of the section 987 QBU and translated into the functional currency of the owner at the spot rate applicable to the date of transfer; and

(B) The amount of historic liabilities, after taking into account § 1.988–1(a)(10), transferred to the owner during the taxable year determined in the functional currency of the section 987 QBU and translated into the functional currency of the owner at the historic rate for each such liability.

(5) *Step 5: Increase the amount determined in steps 1 through 4 by the amount of liabilities transferred from the owner to the section 987 QBU.* The aggregate amount determined in paragraphs (d)(1) through (4) of this section is increased by the total amount of liabilities, after taking into account § 1.988–1(a)(10), transferred from the owner to the section 987 QBU during the taxable year determined in the functional currency of the owner immediately before the transfer.

(6) *Step 6: Decrease or increase the amount determined in steps 1 through 5 by the section 987 taxable income or loss, respectively, of the section 987 QBU for the taxable year.* The aggregate amount determined in paragraphs (d)(1) through (5) of this section is decreased or increased by the section 987 taxable income or loss, respectively, computed under § 1.987–3 for the taxable year.

(7) *Step 7: Increase the amount determined in steps 1 through 6 by any expenses or losses that are not deductible in computing the section 987 taxable income or loss of the section 987 QBU for the taxable year.* The aggregate amount determined under paragraphs (d)(1) through (6) of this section is increased by the amount of any expense or loss that reduces the basis of assets or increases the amount of liabilities on the adjusted balance sheet of the section 987 QBU for the taxable year but is not deductible in computing the section 987 QBU's taxable income or loss for the taxable year (such as business interest expense that is not deductible under section 163(j)). Items of expense or loss described in the preceding sentence are translated into the functional currency of the owner using the exchange rate that would apply under § 1.987–3(c) if they were deductible in computing the section 987 QBU's taxable income or loss for the taxable year. However, any foreign income taxes incurred by the section 987 QBU with respect to which the owner claims a credit are translated at the same rate at which such taxes were translated under section 986(a).

(8) *Step 8: Decrease the amount determined in steps 1 through 7 by the amount of any income or gain that is not included in taxable income in computing the section 987 taxable income or loss of the section 987 QBU for the taxable year.* The aggregate amount determined under paragraphs (d)(1) through (7) of this section is decreased by the amount of any income or gain that increases the basis of assets or reduces the amount of liabilities on the adjusted balance sheet of the section 987 QBU for the taxable year but is not included in taxable income in computing the section 987 QBU's taxable income or loss for the taxable year. Items of income or gain described in the preceding sentence are translated into the functional currency of the owner using the exchange rate that would apply under § 1.987–3(c) if they were included in taxable income in computing the section 987 QBU's taxable income or loss for the taxable year.

(9) *Step 9: Increase or decrease the amount determined in steps 1 through 8 by any income or gain, or any deduction or loss, respectively, that does not impact the adjusted balance sheet.* The aggregate amount determined under paragraphs (d)(1) through (8) of this section is increased by any items of income or gain taken into account in step 6 that do not increase the basis of assets or reduce the amount of liabilities on the adjusted balance sheet of the section 987 QBU for the taxable year, and decreased by any items of deduction or loss taken into account in step 6 that do not reduce the basis of assets or increase the amount of liabilities on the adjusted balance sheet of the section 987 QBU for the taxable year. Items of income, gain, deduction, or loss described in the preceding sentence are translated into the functional currency of the owner using the exchange rate that applied under § 1.987–3(c) in computing the section 987 QBU's taxable income or loss for the taxable year.

(10) *Step 10: Decrease or increase the amount determined in steps 1 through 9 by any increase or decrease, respectively, to the adjusted balance sheet that is not previously taken into account under steps 2 through 9*—(i) *In general.* Except as provided in paragraph (d)(10)(iii) of this section, the aggregate amount determined under paragraphs (d)(1) through (9) of this section is—

(A) Decreased by the residual increase to the adjusted balance sheet (as defined in paragraph (d)(10)(ii) of this section), translated into the owner's functional currency at the yearly average exchange rate for the taxable year; or

(B) Increased by the residual decrease to the adjusted balance sheet (as defined in paragraph (d)(10)(ii) of this section), translated into the owner's functional currency at the yearly average exchange rate for the taxable year.

(ii) *Determining the residual increase or decrease to the adjusted balance sheet.* The residual increase to the adjusted balance sheet is the positive amount, if any, that would be determined under paragraphs (d)(1) through (9) of this section in the functional currency of the section 987 QBU if such amounts were determined in the functional currency of the section 987 QBU. The residual decrease to the adjusted balance sheet is the negative amount, if any, that would be determined under paragraphs (d)(1) through (9) of this section in the functional currency of the section 987 QBU if such amounts were determined in the functional currency of the section 987 QBU.

(iii) *Modifications for taxable years to which a current rate election or an annual recognition election applies.* For any taxable year to which a current rate election or an annual recognition election applies, paragraphs (d)(10)(i) and (ii) of this section are applied by replacing ''paragraphs (d)(1) through (9)'' with ''paragraphs (d)(1) through (5).''

(e) *Determination of the owner functional currency net value of a section 987 QBU*—(1) *In general.* The owner functional currency net value of a section 987 QBU on the last day of a taxable year is equal to the aggregate amount of functional currency and the adjusted basis of each other asset on the section 987 QBU's adjusted balance sheet on that day, less the aggregate amount of each liability on the section 987 QBU's adjusted balance sheet on that day, in each case translated into the owner's functional currency as provided in paragraph (e)(2) of this section.

(2) *Translation of adjusted balance sheet items into the owner's functional currency.* The amount of the section 987 QBU's functional currency, the basis of an asset, or the amount of a liability is translated as follows:

(i) *Marked item.* A marked item is translated into the owner's functional currency at the spot rate applicable to the last day of the relevant taxable year.

(ii) *Historic item.* A historic item is translated into the owner's functional currency at the historic rate.

(f) *Combinations and separations*—(1) *Combinations.* The net accumulated unrecognized section 987 gain or loss of a combined QBU for a taxable year is equal to the sum of the combining QBUs' net accumulated unrecognized section 987 gain or loss. See paragraph (f)(3)(i) of this section (*Example 1*) for an illustration of this rule.

(2) *Separations.* The net accumulated unrecognized section 987 gain or loss of a separated QBU for a taxable year is equal to the separating QBU's net accumulated unrecognized section 987 gain or loss multiplied by the separation fraction. For purposes of determining the owner functional currency net value of the separated QBUs on the last day of the taxable year preceding the taxable year of separation under paragraphs (d)(1)(i)(B) and (e) of this section, the balance sheets of the separated QBUs on that day will be deemed to reflect the assets and liabilities reflected on the balance sheet of the separating QBU on that day, apportioned between the separated QBUs in a reasonable manner that takes into account the assets and liabilities reflected on the balance sheets of the separated QBUs immediately after the separation. See paragraph (f)(3)(ii) of this section (*Example 2*) for an illustration of this rule.

(3) *Examples.* The following examples illustrate the rules of paragraphs (f)(1) and (2) of this section. For purposes of these examples, assume that no section 987 elections are in effect.

(i) *Example 1. Combination of two section 987 QBUs that have the same owner*—(A) *Facts.* DC1, a domestic corporation, owns Entity A, a DE. Entity A conducts a manufacturing business that constitutes a section 987 QBU (*Manufacturing QBU*) that has the euro as its functional currency. Manufacturing QBU has a net accumulated unrecognized section 987 loss of $100. DC1 also owns Entity B, a DE. Entity B conducts a sales business that constitutes a section 987 QBU (*Sales QBU*) that has the euro as its functional currency. Sales QBU has a net accumulated unrecognized section 987 gain of $110. During the taxable year, Entity A merges into Entity B under local law pursuant to which Entity A ceases to exist, Entity B survives, and Entity B acquires all the assets and liabilities of Entity A. As a result, the books and records of Manufacturing QBU and Sales QBU are combined into a new single set of books and records. The combined entity has the euro as its functional currency.

(B) *Analysis.* Pursuant to § 1.987–2(c)(9)(i), Manufacturing QBU and Sales QBU are combining QBUs, and their combination does not give rise to a transfer that is taken into account in determining the amount of a remittance (as defined in § 1.987–5(c)). For purposes of computing net unrecognized section 987 gain or loss under this section for the year of the combination, the combination is deemed to have occurred on the last day of the owner's prior taxable year, such that the owner functional currency net value of the combined section 987 QBU at the end of that taxable year described under paragraph (d)(1)(i)(B) of this section takes into account items reflected on the balance sheets of both Manufacturing QBU and Sales QBU at that time. Additionally, any transactions between Manufacturing QBU and Sales QBU occurring during the year of the merger will not result in transfers to or from a section 987 QBU. Pursuant to paragraph (f)(1) of this section, the combined QBU will have a net accumulated unrecognized section 987 gain of $10 (the $100 loss from Manufacturing QBU plus the $110 gain from Sales QBU).

(ii) *Example 2. Separation of two section 987 QBUs that have the same owner*—(A) *Facts.* DC1, a domestic corporation, owns Entity A, a DE. Entity A conducts a business in the Netherlands that constitutes a section 987 QBU (*Dutch QBU*) that has the euro as its functional currency. The business of Dutch QBU consists of manufacturing and selling bicycles and scooters and is recorded on a single set of books and records. On the last day of year 1, the adjusted basis of the gross assets of Dutch QBU is €1,000. In year 2, the net accumulated unrecognized section 987 loss of Dutch QBU from all prior taxable years is $200. During year 2, Entity A separates the bicycle and scooter business such that each business begins to have its own books and records and to meet the definition of a section 987 QBU under § 1.987–1(b)(3) (hereafter, ''bicycle QBU'' and ''scooter QBU''). There are no transfers between DC1 and Dutch QBU before the separation. After the separation, the aggregate adjusted basis of bicycle QBU's assets is €600 and the aggregate adjusted basis of scooter QBU's assets is €400. Each section 987 QBU continues to have the euro as its functional currency.

(B) *Analysis.* Pursuant to § 1.987–2(c)(9)(iii), bicycle QBU and scooter QBU are separated QBUs, and the separation of Dutch QBU, a separating QBU, does not give rise to a transfer taken into account in determining the amount of a remittance. For purposes of computing net unrecognized section 987 gain or loss under this section for year 2, the separation will be deemed to have occurred on the last day of the owner's prior taxable year, year 1. Pursuant to paragraph (f)(2) of this section and § 1.987–1(h), bicycle QBU will have a separation fraction of €600/€1,000 and net accumulated unrecognized section 987 loss of $120 (€600/€1,000 × $200), and scooter QBU will have a separation fraction of €400/€1,000 and net accumulated unrecognized section 987 loss of $80 (€400/€1,000 × $200).

(g) *Examples.* The following examples illustrate the provisions of this section.

For purposes of the examples, U.S. Corp is a domestic corporation that uses the calendar year as its taxable year and has the dollar as its functional currency. Except as otherwise indicated, no section 987 elections are in effect. Exchange rate assumptions used in these examples are selected for the purpose of illustrating the principles of this section, and no inference is intended by their use. Additionally, the examples are not intended to demonstrate when activities constitute a trade or business within the meaning of §§ 1.989(a)–1(b)(2)(ii)(A) and 1.989(a)–1(c) and therefore whether a section 987 QBU is considered to exist.

(1) *Example 1*—(i) *Facts.* On July 1, year 1, U.S. Corp establishes Japan Branch, a section 987 QBU that has the yen as its functional currency, and U.S. Corp transfers to Japan Branch ¥100,000 with a basis of $1,000 and raw land with a basis of $500. On the same day, Japan Branch borrows ¥10,000 from a bank. In year 1, Japan Branch earns ¥12,000 for providing services and incurs ¥2,000 of related expenses. Japan Branch thus earns ¥10,000 of net income in year 1. The spot rate on July 1, year 1, is $1 = ¥100; the spot rate on December 31, year 1, is $1 = ¥120; and the average rate for the period of July 1, year 1, to December 31, year 1, is $1 = ¥110. Thus, the ¥12,000 of services revenue when translated under § 1.987–3(c)(1) at the yearly average exchange rate equals $109.09 (¥12,000 × ($1/¥110)) = $109.09). The ¥2,000 of expenses translated at the same yearly average exchange rate equals $18.18 (¥2,000 × ($1/¥110) = $18.18). Thus, Japan Branch's net income translated into dollars equals $90.91 ($109.09—$18.18 = $90.91).

(ii) *Analysis.* Under paragraph (a) of this section, U.S. Corp must compute the net unrecognized section 987 gain or loss of Japan Branch for year 1. Because this is Japan Branch's first taxable year, the net unrecognized section 987 gain or loss (as defined under paragraph (b) of this section) is the branch's unrecognized section 987 gain or loss for year 1 as determined in paragraph (d) of this section. The calculations under paragraph (d) of this section are made as follows:

(A) *Step 1.* Under paragraph (d)(1) of this section (Step 1), U.S. Corp must determine the change in the owner functional currency net value (*OFCNV*) of Japan Branch for year 1 in dollars. The change in the OFCNV of Japan Branch for year 1 is equal to the OFCNV of Japan Branch determined in dollars on the last day of year 1, less the OFCNV of Japan Branch determined in dollars on the last day of the preceding taxable year.

(*1*) The OFCNV of Japan Branch on December 31, year 1 is determined under paragraph (e) of this section as the sum of the basis of each asset on Japan Branch's adjusted balance sheet on December 31, year 1, less the sum of each liability on Japan Branch's adjusted balance sheet on that date, translated into dollars as provided in paragraph (e)(2) of this section.

(*2*) For this purpose, Japan Branch will show the following assets and liabilities on its adjusted balance sheet for December 31, year 1: cash of ¥120,000; raw land with a basis of ¥55,000 ($500 translated under § 1.987–2(d)(2) at the historic rate of $1 = ¥110); and liabilities of ¥10,000.

(*3*) Under paragraph (e)(2) of this section, U.S. Corp will translate these items as follows. The ¥120,000 is a marked asset and the ¥10,000 liability is a marked liability. These items are translated into dollars on December 31, year 1, using the spot rate on December 31, year 1, of $1 = ¥120. The raw land is a historic asset and is translated into dollars under paragraph (e)(2)(ii) of this section at the historic rate, which under § 1.987–1(c)(3)(i)(A) is the yearly average exchange rate of $1 = ¥110 applicable to the year the land was transferred to the QBU.

(*4*) The OFCNV of Japan Branch on December 31, year 1, in dollars is $1,416.67, determined below. The OFCNV of Japan Branch on December 31, year 1, is shown below in dollars (together with the corresponding amounts in yen).

TABLE 1 TO PARAGRAPH (g)(1)(ii)(A)(*4*)—OFCNV—END OF YEAR 1

	Amount in ¥	Translation rate	Amount in $
Assets			
Yen	120,000	$1 = ¥120 (spot rate-12/31/year 1)	1,000.00
Land	55,000	$1 = ¥110 (historic rate-yearly average rate-year 1)	500.00
Total assets	175,000		1,500.00
Liabilities			
Bank loan	10,000	$1 = ¥120 (spot rate-12/31/year 1)	83.33
Total liabilities	10,000		83.33
Year 1 ending net value	165,000		1,416.67

(*5*) Under paragraph (d)(1) of this section, the change in OFCNV of Japan Branch for year 1 is equal to the OFCNV of the branch determined in dollars on December 31, year 1, (which is $1,416.67) less the OFCNV of the branch determined in dollars on the last day of the preceding taxable year. Because this is the first taxable year of Japan Branch, the OFCNV of Japan Branch determined in dollars on the last day of the preceding taxable year is zero under paragraph (d)(1)(iii) of this section. Accordingly, the change in OFCNV of Japan Branch for year 1 is $1,416.67.

(B) *Step 2 (no adjustment).* No adjustment is made under paragraph (d)(2) of this section (Step 2) because no assets were transferred by Japan Branch to U.S. Corp during the taxable year.

(C) *Step 3.* On July 1, year 1, U.S. Corp transferred to Japan Branch ¥100,000 with a basis of $1,000.00 and raw land with a basis of $500.00 (equal to ¥55,000, translated under § 1.987–2(d)(2) at the historic rate of $1 = ¥110). The total amount of assets transferred from U.S. Corp to Japan Branch in dollars is $1,500, and the total amount of the transfer in yen is ¥155,000. Therefore, under paragraph (d)(3) of this section (Step 3), the amount determined in previous steps is reduced by $1,500.00, from $1,416.67 to negative $83.33.

(D) *Steps 4 and 5 (no adjustment).* No adjustment is made under paragraphs (d)(4) and (5) of this section (Steps 4 and 5) because no liabilities were transferred by U.S. Corp to Japan Branch or by Japan Branch to U.S. Corp during the taxable year.

(E) *Step 6.* Under paragraph (d)(6) of this section (Step 6), the amount determined in previous steps is decreased by the section 987 taxable income of Japan Branch of $90.91, from negative $83.33 to negative $174.24.

(F) *Steps 7 through 9 (no adjustment).* No adjustment is made under paragraphs (d)(7) through (9) of this section (Steps 7 through 9) because all of Japan Branch's items of income or deduction for the taxable year impact the adjusted balance sheet and are taken into account in computing taxable income.

(G) *Step 10 (no adjustment)*—(*1*) *Calculation of residual increase or decrease to the adjusted balance sheet.* Under paragraph (d)(10)(ii) of this section, the residual increase (or decrease) to the adjusted balance sheet is the positive (or negative) amount, if any, that would be determined under paragraphs (d)(1) through (9) of this section (Steps 1 through 9) in the functional currency of the section 987 QBU if such amounts were determined in the functional currency of the section 987 QBU. In year 1, the relevant steps that must be applied in the functional currency of Japan Branch (the yen) are paragraphs (d)(1), (3), and (6) of this section (Steps 1, 3, and 6). For purposes of applying paragraph (d)(1) of this section (Step 1) in yen, the change in the net value of Japan Branch is ¥165,000. See paragraph (g)(1)(ii)(A)(*4*) of this section. For purposes of applying paragraph (d)(3) of this section (Step 3) in yen, the amount of assets transferred from U.S. Corp to Japan Branch is ¥155,000. See paragraph (g)(1)(ii)(C) of this section. For purposes of applying paragraph (d)(6) of this section (Step 6) in yen, Japan Branch earned ¥10,000 of net income in year 1. The application of these steps results in no residual increase or decrease to the adjusted balance sheet, as shown below:

TABLE 2 TO PARAGRAPH (g)(1)(ii)(G)(*1*)—APPLICATION OF RELEVANT STEPS IN YEN

Change in net value in yen (Step 1)	¥165,000
Subtract amount determined in yen under Step 3 (transfers from owner to section 987 QBU)	(¥155,000)
Subtract amount determined in yen under Step 6 (section 987 taxable income or loss)	(¥10,000)
Residual increase or decrease to the adjusted balance sheet	¥0

(*2*) *No residual increase or decrease to the adjusted balance sheet.* As explained in paragraph (g)(1)(ii)(G)(*1*) of this section, there is no residual increase or decrease to the adjusted balance sheet of Japan Branch in year 1. Therefore, no adjustment is made under paragraph (d)(10) of this section (Step 10). Accordingly, the unrecognized section 987 loss of Japan Branch for year 1 is $174.24.

(2) *Example 2*—(i) *Facts.* The facts are the same as in paragraph (g)(1) of this section (*Example 1*), except that U.S. Corp makes a current rate election under § 1.987–1(d)(2) for year 1.

(ii) *Analysis.* Because a current rate election is in effect for year 1, the unrecognized section 987 gain or loss for year 1 is determined by applying only paragraphs (d)(1) through (5) and (10) of this section (Steps 1 through 5 and Step 10). The calculations under paragraph (d) of this section are made as follows:

(A) *Step 1.* The change in the OFCNV of Japan Branch for year 1 is equal to the OFCNV of Japan Branch determined in dollars on the last day of year 1, less the OFCNV of Japan Branch determined in dollars on the last day of the preceding taxable year.

(*1*) For this purpose, Japan Branch will show the same assets and liabilities on its adjusted balance sheet for December 31, year 1 as are described in paragraph (g)(1)(ii)(A)(*2*) of this section (*Example 1*), but the land is treated as a marked asset as a result of the current rate election. The adjusted balance sheet reflects cash of ¥120,000, raw land with a basis of ¥50,000 ($500 translated under § 1.987–2(d)(1) at the July 1, year 1 spot rate of $1 = ¥100), and liabilities of ¥10,000.

(*2*) Because of the current rate election, all of Japan Branch's assets and liabilities are treated as marked items. Therefore, under paragraph (e)(2) of this section, these items are translated into dollars on December 31, year 1, using the spot rate on December 31, year 1, of $1 = ¥120.

(*3*) The OFCNV of Japan Branch on December 31, year 1, and the change in OFCNV of Japan Branch for year 1, is $1,333.33, determined below. The OFCNV (and change in OFCNV) of Japan Branch is shown below (together with the corresponding amounts in yen).

TABLE 3 TO PARAGRAPH (g)(2)(ii)(A)(*3*)—OFCNV AND CHANGE IN OFCNV—YEAR 1

	Amount in ¥	Translation rate	Amount in $
Assets			
Yen	120,000	$1 = ¥120 (spot rate-12/31/year 1)	1,000.00
Land	50,000	$1 = ¥120 (spot rate-12/31/year 1)	416.67
Total assets	170,000		1,416.67
Liabilities			
Bank loan	10,000	$1 = ¥120 (spot rate-12/31/year 1)	83.33
Total liabilities	10,000		83.33
Year 1 ending net value	160,000		1,333.33
Net value on the last day of the preceding taxable year.	0		0
Change in net value	160,000		1,333.33

(B) *Step 2 (no adjustment).* No adjustment is made under paragraph (d)(2) of this section (Step 2) because no assets were transferred by Japan Branch to U.S. Corp during the taxable year.

(C) *Step 3.* On July 1, year 1, U.S. Corp transferred to Japan Branch ¥100,000 with a basis of $1,000.00 and raw land with a basis of $500.00 (equal to ¥50,000, translated under § 1.987–2(d)(1) at the spot rate on July 31, year 1 of $1 = ¥100). The total amount of assets transferred in dollars is $1,500.00, and the amount of assets transferred in yen is ¥150,000. Therefore, under paragraph (d)(3) of this section (Step 3), the amount determined in previous steps is reduced by $1,500, from $1,333.33 to negative $166.67.

(D) *Steps 4 and 5 (no adjustment*). No adjustment is made under paragraphs (d)(4) and (5) of this section (Steps 4 and 5) because no liabilities were transferred by U.S. Corp to Japan Branch or by Japan Branch to U.S. Corp during the taxable year.

(E) *Steps 6 through 9 do not apply.* Under paragraph (d) of this section, paragraphs (d)(6) through (9) of this section (Steps 6 through 9) do not apply because a current rate election is in effect.

(F) *Step 10*—(*1*) *Application of relevant steps in Japan Branch's functional currency.* Under paragraph (d)(10)(iii) of this section, because a current rate election is in effect, the residual increase or decrease to the adjusted balance sheet is determined by applying paragraphs (d)(1) through (5) of this section (Steps 1 through 5) in the functional currency of the section 987 QBU. The relevant steps that must be applied under paragraph (d)(10) of this section in the functional currency of Japan Branch are paragraphs (d)(1) and (3) of this section (Steps 1 and 3). See paragraphs (g)(2)(ii)(A) and (C) of this section for amounts determined in yen. The residual increase to the adjusted balance sheet is determined as follows:

TABLE 4 TO PARAGRAPH (g)(2)(ii)(F)(*1*)—APPLICATION OF RELEVANT STEPS IN YEN

Step 1: Change in net value	¥160,000
Step 3: Subtract amount of transfers from owner to section 987 QBU	(¥150,000)
Residual increase or decrease to the adjusted balance sheet	¥10,000

(*2*) *Residual increase or decrease to the adjusted balance sheet.* As explained in paragraph (g)(2)(ii)(F)(*1*) of this section, the residual increase to Japan Branch's adjusted balance sheet in year 1 is ¥10,000. This amount, translated at the yearly average exchange rate of $1 = ¥110, equals $90.91. Therefore, the amount determined in previous steps is reduced by $90.91, from negative $166.67 to negative $257.58. Accordingly, the unrecognized section 987 loss of Japan Branch for year 1 is $257.58.

(3) *Example 3*—(i) *Facts*—(A) *Background.* The facts in year 1 are the same as in paragraph (g)(2) of this section (*Example 2*). In year 9, a current rate election remains in effect, U.S. Corp has net unrecognized section 987 loss of $1,000 with respect to Japan Branch, and Japan Branch does not make a remittance. On December 31, year 9, the adjusted balance sheet of Japan Branch shows the following assets and liabilities: cash of ¥120,000; raw land with a basis of ¥50,000; and liabilities of ¥10,000. Effective for year 10, U.S. Corp revokes the current rate election.

(B) *Operations in year 10.* In year 10, Japan Branch earns ¥12,000 for providing services and incurs ¥2,000 of related expenses. Japan Branch thus earns ¥10,000 of net income in year 10. On December 31, year 10, the adjusted balance sheet of Japan Branch shows the following assets and liabilities: cash of ¥130,000; raw land with a basis of ¥50,000; and liabilities of ¥10,000. Assume that the spot rate on December 31, year 9, is $1 = ¥120; the spot rate on December 31, year 10, is $1 = ¥130; and the yearly average exchange rate for year 10 is $1 = ¥125. Thus, the ¥12,000 of services revenue when properly translated under § 1.987–3(c)(1) at the yearly average exchange rate equals $96.00 (¥12,000 × ($1/¥125)) = $96.00). The ¥2,000 of expenses translated at the same yearly average exchange rate equals $16.00 (¥2,000 × ($1/¥125) = $16.00). Thus, Japan Branch's net income translated into dollars equals $80. There are no transfers of assets or liabilities between U.S. Corp and Japan Branch in year 10.

(ii) *Analysis*—(A) *Determination of OFCNV for year 9.* Under paragraph (d)(1)(iv) of this section, the OFCNV of a section 987 QBU on the last day of the preceding taxable year is determined based on the elections that were (or were not) in effect on the last day of that taxable year. In year 9, a current rate election was in effect. Therefore, in determining the OFCNV of Japan Branch for year 9, all assets and liabilities of Japan Branch (including the land) are treated as marked items. The OFCNV of Japan Branch for year 9, is $1,333.33, determined under paragraph (e) of this section as follows (together with the corresponding amounts in yen):

TABLE 5 TO PARAGRAPH (g)(3)(ii)(A)—OFCNV—END OF YEAR 9

	Amount in ¥	Translation rate	Amount in $
Assets			
Yen	120,000	$1 = ¥120 (spot rate-12/31/year 9)	1,000.00
Land	50,000	$1 = ¥120 (spot rate-12/31/year 9)	416.67
Total assets	170,000		1,416.67
Liabilities			
Bank loan	10,000	$1 = ¥120 (spot rate-12/31/year 9)	83.33
Total liabilities	10,000		83.33
Year 9 ending net value	160,000		1,333.33

(B) *Determination of OFCNV for year 10.* In year 10, a current rate election is not in effect. Therefore, in determining the OFCNV of Japan Branch for year 10, the land owned by Japan Branch is treated as a historic item. Under § 1.987–1(c)(3)(i)(F), the historic rate applicable to historic items that were properly reflected on the books and records of Japan Branch on the last day of the last taxable year in which a current rate election was in effect (December 31, year 9) generally is equal to the spot rate applicable to that day. Therefore, the historic rate applicable to the land is the spot rate on December 31, year 9. The OFCNV of Japan Branch for year 10 is $1,339.74, determined under paragraph (e) of this section as follows (together with the corresponding amounts in yen):

TABLE 6 TO PARAGRAPH (g)(3)(ii)(B)—OFCNV—END OF YEAR 10

	Amount in ¥	Translation rate	Amount in $
Assets			
Yen	130,000	$1 = ¥130 (spot rate-12/31/year 10)	1,000.00
Land	50,000	$1 = ¥120 (historic rate-spot rate-12/31/year 9)	416.67
Total assets	180,000		1,416.67
Liabilities			
Bank loan	10,000	$1 = ¥130 (spot rate-12/31/year 10)	76.92
Total liabilities	10,000		76.92
Year 10 ending net value	170,000		1,339.74

(C) *Determination of unrecognized section 987 gain or loss for year 10.* The unrecognized section 987 gain or loss of Japan Branch for year 10 is determined under paragraph (d) of this section as follows:

(*1*) *Step 1.* The change in the OFCNV of Japan Branch for year 10 is equal to the OFCNV of Japan Branch determined in dollars on the last day of year 10, less the OFCNV of Japan Branch determined in dollars on the last day of year 9. Therefore, the change in OFCNV is equal to $6.41 ($1,339.74 − $1,333.33).

(*2*) *Steps 2 through 5 (no adjustment).* No adjustment is made under paragraphs (d)(2) through (5) of this section (Steps 2 through 5) because no assets or liabilities were transferred by U.S. Corp to Japan Branch or by Japan Branch to U.S. Corp during the taxable year.

(*3*) *Step 6.* Under paragraph (d)(6) of this section (Step 6), the amount determined in previous steps is decreased by the section 987 taxable income of Japan Branch of $80.00, from $6.41 to negative $73.59.

(*4*) *Steps 7 through 10 (no adjustment).* No adjustment is made under paragraphs (d)(7) through (10) of this section (Steps 7 through 10) because all of Japan Branch's items of income or deduction for the taxable year impact the adjusted balance sheet and are taken into account in computing taxable income. In addition, Japan Branch does not have a residual increase or decrease to the adjusted balance sheet (because the change in net value of ¥10,000 is equal to the amount of Japan Branch's net income in year 10). Accordingly, the unrecognized section 987 loss of Japan Branch for year 10 is negative $73.59.

(D) *Determination of net unrecognized section 987 gain or loss.* In year 10, Japan Branch has net accumulated section 987 loss of $1,000. Because U.S. Corp revoked the current rate election for year 10, the net accumulated section 987 loss of $1,000 becomes suspended section 987 loss under § 1.987–11(d)(2) and Japan Branch's net accumulated section 987 loss is reduced to zero. Therefore, in year 10, Japan Branch's net unrecognized section 987 loss is equal to $73.59, its unrecognized section 987 loss for year 10.

■ 10. Section 1.987–5 is revised to read as follows:

§ 1.987–5 Recognition of section 987 gain or loss.

(a) *Recognition of section 987 gain or loss by the owner of a section 987 QBU.* The taxable income of an owner of a section 987 QBU includes the owner's section 987 gain or loss recognized with respect to the section 987 QBU for the taxable year. Except as otherwise provided in § 1.987–7A(c)(4)(ii), 1.987–11(c), 1.987–12(b) or (e), or 1.987–13(h) or (k), for any taxable year the owner's section 987 gain or loss recognized with respect to a section 987 QBU is equal to:

(1) The owner's net unrecognized section 987 gain or loss with respect to the section 987 QBU determined under § 1.987–4 on the last day of such taxable year (or, if earlier, on the day the section 987 QBU is terminated under § 1.987–8); multiplied by

(2) The owner's remittance proportion for the taxable year, as determined under paragraph (b) of this section.

(b) *Remittance proportion*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, the owner's remittance proportion with respect to a section 987 QBU for a taxable year is equal to:

(i) The amount of the remittance, as determined under paragraph (c) of this section, to the owner from the section 987 QBU for such taxable year; divided by

(ii) The sum of:

(A) The aggregate adjusted basis of the gross assets of the section 987 QBU as of the end of the taxable year that are reflected on its year-end balance sheet translated into the owner's functional currency as provided in § 1.987–4(e)(2); and

(B) The amount of the remittance, as determined under paragraph (c) of this section.

(2) *Annual recognition election.* A taxpayer may elect to recognize its net unrecognized section 987 gain or loss with respect to the section 987 QBU on an annual basis (*annual recognition election*). For any taxable year in which the annual recognition election is in effect, the owner's remittance proportion with respect to a section 987 QBU is one. See paragraph (g) of this section for an example illustrating this rule. Additionally, for any taxable year of an original deferral QBU owner in which an annual recognition election is in effect, the remittance proportion with respect to any successor deferral QBU is one.

(c) *Remittance*—(1) *Definition.* A remittance is determined in the owner's functional currency and equals the excess, if any, of:

(i) The aggregate of all amounts transferred from the section 987 QBU to the owner during the taxable year, as determined in paragraph (d) of this section; over

(ii) The aggregate of all amounts transferred from the owner to the section 987 QBU during the taxable year, as determined in paragraph (e) of this section.

(2) *Day when a remittance is determined.* An owner's remittance from a section 987 QBU is determined on the last day of the owner's taxable year (or, if earlier, on the day the section 987 QBU is terminated under § 1.987–8).

(3) *Termination.* A termination of a section 987 QBU as determined under § 1.987–8 is treated as a remittance of all the gross assets of the section 987 QBU to the owner on the date of such termination. *See* § 1.987–8(e). Accordingly, the remittance proportion in the case of a termination is one.

(d) *Aggregate of all amounts transferred from the section 987 QBU to the owner for the taxable year.* For purposes of paragraph (c)(1)(i) of this section, the aggregate of all amounts transferred from the section 987 QBU to the owner for the taxable year is the aggregate amount of functional currency and the aggregate adjusted basis of the other assets transferred, as determined in the owner's functional currency under § 1.987–4(d)(2). Solely for this purpose, the amount of liabilities transferred from the owner to the section 987 QBU, as determined in the owner's functional currency under § 1.987–4(d)(5), is treated as a transfer of assets from the section 987 QBU to the owner with an adjusted basis equal to the amount of such liabilities.

(e) *Aggregate of all amounts transferred from the owner to the section 987 QBU for the taxable year.* For purposes of paragraph (c)(1)(ii) of this section, the aggregate of all amounts transferred from the owner to the section 987 QBU for the taxable year is the aggregate amount of functional currency and the aggregate adjusted basis of the assets transferred, as determined in the owner's functional currency under § 1.987–4(d)(3). Solely for this purpose, the amount of liabilities transferred from the section 987 QBU to the owner determined under § 1.987–4(d)(4) is treated as a transfer of assets from the owner to the section 987 QBU with an adjusted basis equal to the amount of such liabilities.

(f) *Determination of owner's adjusted basis in transferred assets and amount of transferred liabilities*—(1) *In general.* The owner's adjusted basis in an asset or the amount of a liability received in a transfer from a section 987 QBU (whether or not such transfer is made in connection with a remittance) is determined in the owner's functional currency under the rules prescribed in paragraphs (f)(2) and (3) of this section.

(2) *Marked items.* The basis of a marked asset or amount of a marked liability is the amount determined by translating the section 987 QBU's functional currency basis of the asset or amount of the liability, after taking into account § 1.988–1(a)(10), into the owner's functional currency at the spot rate applicable to the date of transfer.

(3) *Historic items.* The basis of a historic asset or amount of a historic liability is the amount determined by translating the section 987 QBU's functional currency basis of the asset or amount of the liability, after taking into account § 1.988–1(a)(10), into the owner's functional currency at the historic rate for the asset or liability.

(g) *Example.* The following example illustrates the calculation of section 987 gain or loss under this section. For purposes of this example, except as otherwise indicated, assume that no section 987 elections are in effect.

(1) *Facts*—(i) U.S. Corp, a domestic corporation with the dollar as its functional currency, operates in the United Kingdom through Business A, a section 987 QBU with the pound as its functional currency. During year 2, the following transfers took place between U.S. Corp and Business A. On January 5, year 2, U.S. Corp transferred to Business A $300, which Business A used during the year to purchase services. On March 5, year 2, Business A transferred a machine to U.S. Corp. The pound adjusted basis of the machine when properly translated into dollars as described under § 1.987–4(d)(2)(ii)(B) and paragraph (d) of this section is $500. On November 1, year 2, Business A transferred pounds to U.S. Corp. The dollar amount of the pounds when properly translated as described under § 1.987–4(d)(2)(ii)(A) and paragraph (d) of this section is $2,300. On December 7, year 2, U.S Corp transferred a truck to Business A with an adjusted basis of $2,000.

(ii) At the end of year 2, Business A holds assets, properly translated into the owner's functional currency pursuant to § 1.987–4(e)(2), consisting of a computer with a pound adjusted basis equivalent to $500, a truck with a pound adjusted basis equivalent to $2,000, and pounds equivalent to $2,850. In addition, Business A has a pound liability entered into in year 1 with Bank A. All such assets and liabilities are reflected on the books and records of Business A. Assume that the net unrecognized section 987 gain for Business A as determined under § 1.987–4 as of the last day of year 2 is $80.

(2) *Analysis.* U.S. Corp's section 987 gain with respect to Business A is determined as follows:

(i) *Computation of amount of remittance.* Under paragraphs (c)(1) and (2) of this section, U.S. Corp must determine the amount of the remittance for year 2 in the owner's functional currency (dollars) on the last day of year 2. The amount of the remittance for year 2 is $500, determined as follows:

TABLE 1 TO PARAGRAPH (g)(2)(i)

Transfers from Business A to U.S. Corp in dollars	
Machine	$500
Pounds	2,300
Aggregate transfers from Business A to U.S. Corp	$2,800
Transfers from U.S. Corp to Business A in dollars	
U.S. dollars	$300
Truck	2,000
Aggregate transfers from U.S. Corp to Business A	$2,300
Computation of amount of remittance	
Aggregate transfers from Business A to U.S. Corp	$2,800
Less: aggregate transfers from U.S. Corp to Business A	(2,300)
Total remittance	$500

(ii) *Computation of section 987 QBU gross assets plus remittance.* Under paragraph (b)(1)(ii) of this section, Business A must determine the aggregate basis of its gross assets that are reflected on its year-end balance sheet translated into the owner's functional currency and must increase this amount by the amount of the remittance.

TABLE 2 TO PARAGRAPH (g)(2)(ii)

Computer	$500
Pounds	2,850
Truck	2,000
Aggregate gross assets	$5,350
Remittance	$500
Aggregate basis of Business A's gross assets at end of year 2, increased by amount of remittance	$5,850

(iii) *Computation of remittance proportion.* Under paragraph (b) of this section, Business A must compute the remittance proportion by dividing the $500 remittance amount by the $5,850 sum of the aggregate basis of Business A's gross assets and the amount of the remittance. The resulting remittance proportion is 0.085.

(iv) *Computation of section 987 gain or loss.* The amount of U.S. Corp's section 987 gain or loss that is recognized with respect to Business A is determined under paragraph (a) of this section by multiplying the 0.085 remittance proportion by the $80 of net unrecognized section 987 gain. U.S. Corp's resulting recognized section 987 gain for year 2 is $6.80.

(3) *Annual recognition election.* If an annual recognition election under paragraph (b)(2) of this section were in effect for year 2, U.S. Corp's remittance proportion would be one. Accordingly, U.S. Corp would recognize all $80 of the net unrecognized section 987 gain with respect to Business A.

■ 11. Section 1.987–6, as proposed to be amended by 81 FR 88882 (December 8, 2016), is further amended by:

■ a. Revising paragraph (a).

■ b. Adding paragraph (b) introductory text.

■ c. Revising paragraphs (b)(1) through (3), and (c).

The revisions and addition read as follows:

§ 1.987–6 Character and source of section 987 gain or loss.

(a) *Ordinary income or loss.* Section 987 gain or loss is ordinary income or loss for Federal income tax purposes.

(b) *Character and source of section 987 gain or loss.* With respect to each section 987 QBU, the character and source of section 987 gain or loss is determined under this paragraph (b) for all purposes of the Internal Revenue Code, including sections 904(d), 907, and 954. References to an owner in this paragraph (b) include a partner of a partnership (other than a section 987 aggregate partnership) or shareholder of an S corporation that has section 987 gain or loss attributable to a section 987 QBU owned by the partnership or S corporation.

(1) *Timing of character and source determination.* The character and source of section 987 gain or loss is determined based on the initial assignment pursuant to paragraph (b)(2)(i) of this section and may be reassigned in the year in which the section 987 gain or loss is recognized pursuant to paragraph (b)(2)(ii) of this section. The initial assignment is made in the earliest of the taxable years described in paragraphs (b)(1)(i) through (iv) of this section.

(i) The taxable year in which the net unrecognized section 987 gain or loss is recognized.

(ii) The taxable year in which the net unrecognized section 987 loss becomes suspended section 987 loss.

(iii) The taxable year in which the net unrecognized section 987 gain or loss becomes deferred section 987 gain or loss.

(iv) In the case of pretransition gain or loss that is recognized ratably over the transition period pursuant to the election under § 1.987–10(e)(5)(ii), the taxable year that includes the transition date.

(2) *Method for determining the character and source of section 987 gain or loss*—(i) *Initial assignment*—(A) *In general.* In a taxable year of the initial assignment, determined under paragraph (b)(1) of this section, the owner assigns gross section 987 gain or loss to the statutory and residual groupings in the same proportions as the proportions in which the tax book value of the assets of the section 987 QBU are assigned to the groupings under the asset method in §§ 1.861–9(g) and 1.861–9T(g), as modified by this paragraph (b)(2)(i). For purposes of applying the asset method, the owner takes into account only the assets that are attributed to the section 987 QBU under § 1.987–2(b).

(B) *Special rules for applying the asset method to assign section 987 gain or loss.* For purposes of assigning gross section 987 gain or loss to the statutory and residual groupings under paragraph (b)(2)(i)(A) of this section, the proportions in which the tax book value of the assets of the section 987 QBU are assigned to the groupings described in paragraph (b)(2)(i)(A) of this section are determined without regard to section 987 gain or loss. Further, the section 987 gain or loss is assigned after any reattribution of gross income required under § 1.904–4(f)(2)(vi) or 1.951A–2(c)(7)(ii)(B)(*2*) (or the principles thereof, as applicable), but before the allocation and apportionment of expenses or the application of provisions that are based on a net income computation, such as the high-tax exception to passive category income in § 1.904–4(c), the high-tax exception to foreign base company income in § 1.954–1(d), and the high-tax exclusion from tested income in § 1.951A–2(c)(7).

(C) *Section 987 gain or loss that is assigned to subpart F income groups treated as attributable to section 988 transactions.* Section 987 gain or loss assigned under paragraphs (b)(2)(i)(A) and (B) of this section to a grouping described in § 1.960–1(d)(2)(ii)(B)(*2*)(*i*) through (*v*) (subpart F income groups) is treated as foreign currency gain or foreign currency loss attributable to section 988 transactions not directly related to the business needs of the controlled foreign corporation and is taken into account for purposes of determining the excess of foreign currency gains over foreign currency losses characterized as foreign personal holding company income under section 954(c)(1)(D).

(D) *Section 987 gain or loss assigned to tentative tested income rather than tested income*—(*1*) *In general.* In the case of a controlled foreign corporation, the initial assignment of section 987 gain or loss under paragraphs (b)(2)(i)(A) and (B) of this section is made as though the election described in § 1.951A–2(c)(7)(viii) is in effect for the taxable year. As a result, section 987 gain or loss that would have initially been characterized as tested income in a section 904 category if no election under § 1.951A–2(c)(7) was in effect is initially characterized as tentative tested income in the section 904 category (a *tentative tested income group*).

(*2*) *For purposes of the GILTI high-tax exclusion, section 987 gain or loss is not attributable to any tested unit.* In the case of a controlled foreign corporation, the initial assignment of section 987 gain or loss is made as though the section 987 gain or loss was not attributable to any tested unit for purposes of applying § 1.951A–2(c)(7) (GILTI high-tax exclusion). *See* paragraph (b)(2)(iii) of this section (applying the GILTI high-tax exclusion by treating all section 987 gain or loss in the same tentative tested income group as composing a single tentative tested income item).

(E) *Initial assignment applies for purposes of the loss-to-the-extent-of-gain rule. See* § 1.987–11(e) and (f) (grouping of section 987 gain and loss and applying the loss-to-the-extent-of-gain rule on basis of the initial assignment of section 987 gain and loss under this paragraph (b)(2)(i)).

(ii) *Reassignment of section 987 gain or loss.* In the taxable year in which section 987 gain or loss is recognized (determined by taking into account §§ 1.987–5, 1.987–11(e), 1.987–12(c), and 1.987–13(b) through (d), if applicable), the section 987 gain or loss is sourced and characterized based on the initial determination in paragraph (b)(2)(i)(B) of this section, but with appropriate changes to account for the application of provisions that are based on a net income computation such as the high-tax exception to passive category income in § 1.904–4(c), the high-tax exception to foreign base company income in § 1.954–1(d), and the high-tax exclusion to tested income in § 1.951A–2(c)(7). Thus, for example, if an election under § 1.951A–2(c)(7)(viii) (GILTI high-tax exclusion) is in effect for the taxable year, section 987 gain or loss initially assigned to a tentative tested income group will be reassigned to a tested income group (as defined in § 1.960–1(d)(2)(ii)(C)) or to the residual income group (as defined in § 1.960–1(d)(2)(ii)(D)). If no election is made under § 1.951A–2(c)(7)(viii) for a taxable year, all of the section 987 gain or loss that is recognized in the taxable year that was initially assigned to tentative tested income under paragraph (b)(2)(i) of this section, is reassigned to the appropriate tested income group (as defined in § 1.960–1(d)(2)(ii)(C)).

(iii) *Special rule for the application of the GILTI high-tax exclusion to section 987 gain or loss.* Section 987 gain in a tentative tested income group that is recognized by a controlled foreign corporation in a taxable year comprises a single tentative gross tested income item (as if it were allocable to its own tested unit) within the meaning of § 1.951A–2(c)(7)(ii), and section 987 loss in a tentative tested income group that is recognized by a controlled foreign corporation in the taxable year is allocated and apportioned to the corresponding tentative gross tested income item for purposes of calculating the tentative tested income item within the meaning of § 1.951A–2(c)(7)(iii). Thus, for purposes of applying the high-tax exclusion in § 1.951A–2(c)(7), all of the section 987 gain and loss in a tentative tested income group that is recognized by the controlled foreign corporation in a taxable year is a single tentative tested income item.

(3) *Allocation and apportionment of foreign income tax to section 987 items under section 861.* For purposes of applying the definition of a corresponding U.S. item in § 1.861–20(b), an item of foreign gross income and an item of section 987 gain or loss are treated as arising from the same transaction or other realization event only if the requirements in both paragraphs (b)(3)(i) and (ii) of this section are satisfied.

(i) *The foreign gross income is an item of foreign currency gain or loss.* The owner of the section 987 QBU, original deferral QBU owner, or original suspended loss QBU owner includes the foreign gross income under the laws of the foreign country in which it is a tax resident because under that foreign law it is required to recognize foreign currency gain or loss with respect to its interest in the section 987 QBU or with respect to a successor deferral QBU or successor suspended loss QBU.

(ii) *The same event or events give rise to both the foreign gross income and the section 987 gain or loss.* The remittance under § 1.987–5(c) that gave rise to the item of section 987 gain or loss comprises one or more of the events that gave rise to the item of foreign gross income described in paragraph (b)(3)(i) of this section.

* * * * *

(c) *Examples.* The following examples illustrate the application of this section. For purposes of the examples, assume that no section 987 elections are in effect.

(1) *Example 1.* CFC is a controlled foreign corporation with the Swiss franc (*Sf*) as its functional currency. CFC is the owner of Business A, a section 987 QBU that has the euro as its functional currency. For year 1, CFC does not have an election described in § 1.951A–2(c)(7)(viii) in effect, and CFC recognizes section 987 gain of Sf10,000 under § 1.987–5. Business A has average total assets of Sf1,000,000 in year 1, which generate income (other than section 987 gain) as follows: Sf750,000 of assets that produce gross income in the statutory grouping for general category tested income under sections 904(d)(1)(A) and 951A; and Sf250,000 of assets that produce foreign source passive gross income in one of the groupings described in § 1.960–1(d)(2)(ii)(B)(*2*)(*i*) through (*v*) (subpart F income groups). Under paragraphs (b)(2)(i)(A), (B), and (D) of this section, Sf7,500 (Sf750,000/Sf1,000,000 × Sf10,000) of the section 987 gain is initially assigned to the statutory grouping of foreign source general category tentative tested income. Because an election under § 1.951A–2(c)(7)(viii) is not in effect for the taxable year in which the section 987 gain is recognized, the section 987 gain is reassigned under paragraph (b)(2)(ii) of this section to foreign source general category tested income. The remaining Sf2,500 (Sf250,000/Sf1,000,000 × Sf10,000) is characterized under paragraphs (b)(2)(i)(A) and (B) of this section by reference to assets that give rise to foreign source passive gross income in one of the groupings described in § 1.960–1(d)(2)(ii)(B)(*2*)(*i*) through (*v*) (subpart F income groups) and is therefore treated under paragraph (b)(2)(i)(C) of this section as foreign source foreign currency gain taken into account for purpose of determining foreign personal holding company income under section 954(c)(1)(D). All of the section 987 gain is treated as ordinary income.

(2) *Example 2.* The facts are the same as in paragraph (c)(1) of this section (*Example 1*) except that: CFC recognizes section 987 loss of Sf40,000, Sf10,000 of which is characterized under paragraphs (b)(2)(i)(A) and (B) of this section by reference to assets that give rise to foreign source passive gross income in one of the groupings described in § 1.960–1(d)(2)(ii)(B)(*2*)(*i*) through (*v*) (subpart F income groups); and CFC otherwise has Sf12,000 of net foreign currency gain determined under § 1.954–2(g) that is taken into account in determining the excess of foreign currency gain over foreign currency losses characterized as foreign personal holding company income under section 954(c)(1)(D). Under paragraph (b)(2)(i)(C) of this section, the Sf10,000 section 987 loss characterized by reference to assets that give rise to foreign source passive gross income in one of the groupings described in § 1.960–1(d)(2)(ii)(B)(*2*)(*i*) through (*v*) (subpart F income groups) is treated as foreign currency loss taken into account under section 954(c)(1)(D) for purposes of computing foreign personal holding company income. Accordingly, CFC will aggregate the Sf10,000 section 987 loss with the Sf12,000 net foreign currency gain and will have Sf2,000 of net foreign currency gain characterized as passive foreign personal holding company income under section 954(c)(1)(D).

§ 1.987–7 [Redesignated as § 1.987–7B]

■ 12. Section 1.987–7 is redesignated as § 1.987–7B.

■ 13. Section 1.987–7A is added to read as follows:

§ 1.987–7A Partnerships and S corporations that own section 987 QBUs.

(a) *Scope and special rule*—(1) *In general.* This section provides rules applicable to partnerships (other than section 987 aggregate partnerships) and S corporations that own section 987 QBUs and their partners and shareholders. Paragraph (b) of this section provides the general rule that partnerships are treated as owners of section 987 QBUs. Paragraph (c) of this section provides special rules that apply to section 987 QBUs owned by partnerships and their partners. Paragraph (d) of this section provides rules for adjusting the partner's basis in its partnership interest for its section 987 gain or loss allocated from the partnership. Paragraph (e) of this section is reserved for rules regarding the treatment of section 987 gain or loss when a partner transfers or otherwise reduces its interest in a partnership. Paragraph (f) of this section is reserved for special rules regarding the source and character of section 987 gain and loss of a partner with respect to a section 987 QBU owned by a partnership that would apply in addition to § 1.987–6. Paragraph (g) of this section provides that S corporations are treated in the same manner as partnerships for purposes of the section 987 regulations. Paragraph (h) of this section provides examples.

(2) *References to partnerships are to non-section 987 aggregate partnerships.* For purposes of the section 987 regulations, references to ‘‘partnerships’’ are treated as references to partnerships that are not section 987 aggregate partnerships, except where the context otherwise requires.

(b) *Partnerships treated as owners of section 987 QBUs.* Except as otherwise provided, the section 987 regulations apply to a partnership that is the owner of a section 987 QBU in the same manner as they apply to other owners of section 987 QBUs. See paragraph (c) of this section and § 1.987–1(b)(1)(ii) (de minimis rule), providing special rules for partnerships that are owners of a section 987 QBU. Thus, for example, if a partnership owns an eligible QBU with a functional currency that is different from the functional currency of the partnership, the eligible QBU is a section 987 QBU, the partnership is its owner, and the unrecognized section 987 gain or loss of the section 987 QBU for a taxable year is determined under § 1.987–4(d) by reference to the functional currency of the partnership and the section 987 QBU.

(c) *Section 987 QBUs owned by partnerships*—(1) *Annual allocation of a partnership's unrecognized section 987 gain or loss to its partners*—(i) *In general.* This paragraph (c)(1) applies to each taxable year of a partnership and with respect to each section 987 QBU of the partnership. A partnership determines its unrecognized section 987 gain or loss for a taxable year under § 1.987–4(d) with respect to each section 987 QBU. The partnership allocates to each partner the partner's share of the unrecognized section 987 gain or loss for a taxable year with respect to each section 987 QBU. The partnership determines each partner's share of unrecognized section 987 gain or loss for a taxable year under paragraph (c)(1)(ii) of this section. Each partner translates its share of unrecognized section 987 gain or loss for a taxable year into the partner's functional currency, if necessary, at the yearly average exchange rate for the partnership's taxable year.

(ii) *Determination of partner's share of unrecognized section 987 gain or loss.* A partnership determines a partner's share of any unrecognized section 987 gain or loss for the taxable year with respect to a section 987 QBU based on the partner's distributive share of profits or losses with respect to the section 987 QBU for the taxable year, as determined by the partnership agreement. The principles of section 706(d) apply to this determination.

(iii) *Partner-level attribute.* Net unrecognized section 987 gain or loss, deferred section 987 gain or loss, and suspended section 987 loss of a partner that are attributable to a partnership are attributes of the partner (not the partnership). As a result, the section 987 gain or loss cannot be used by the partnership or any other partner, including any person that acquires the partner's partnership interest (other than in a transaction described in section 381(a)).

(2) *Net unrecognized section 987 gain or loss with respect to a section 987 QBU is determined at the partner level.* A partner determines its net unrecognized section 987 gain or loss with respect to a section 987 QBU owned by a partnership under § 1.987–4(b) and (c) at the partner level by taking into account the partner's share of unrecognized section 987 gain or loss with respect to the section 987 QBU owned by a partnership.

(3) *Recognition (or suspension) of net unrecognized section 987 gain or loss upon remittance.* With respect to a section 987 QBU owned by a partnership, a person that is a partner on the last day of the partnership's taxable year determines the amount of its net unrecognized section 987 gain or loss that is recognized under § 1.987–5(a) by reference to its net unrecognized section 987 gain or loss with respect to the section 987 QBU (after taking into account the adjustments under paragraphs (c)(1) and (4) of this section) and the partnership's remittance proportion, as determined under § 1.987–5(a)(2).

(4) *Deferred section 987 gain or loss and suspended section 987 loss*—(i) *Loss to the extent of gain rule applied at the partner level.* The amount of suspended section 987 loss recognized and taken into account by a partner under § 1.987–11(e) (loss to the extent of gain rule) is determined by reference to section 987 gain recognized by the partner, without regard to whether the section 987 gain is attributable to a section 987 QBU owned by a partnership.

(ii) *Partner- and partnership-level application of §§ 1.987–11 through 1.987–13*—(A) *Partner owns an interest in the partnership.* During the time in which a partner or its controlled group owns an interest in a partnership from which it was allocated unrecognized section 987 gain or loss, §§ 1.987–11 through 1.987–13 are applied by treating the partnership as the owner, original deferral QBU owner, or original suspended loss QBU owner, as appropriate, and treating the partner's net unrecognized section 987 gain or loss as deferred section 987 gain or loss or suspended section 987 loss, as appropriate.

(B) *Termination of partner's interest in the partnership.* If the partner ceases to own an interest in a partnership from which it was allocated unrecognized section 987 gain or loss, then each successor deferral QBU or successor suspended loss QBU of the partnership is retested under § 1.987–12(b) or 1.987–13(c) and treated as if the partner had transferred the eligible QBU to its actual owner immediately after the partner ceased to own an interest in the partnership. Accordingly, if the owner of the eligible QBU is not a member of the partner's controlled group, the partner may recognize its deferred section 987 gain or loss or suspended section 987 loss to the extent provided in § 1.987–12(b) or 1.987–13(c).

(5) *Section 987 elections*—(i) *Elections made by the partnership.* Except as provided in paragraph (c)(6)(ii) of this section, section 987 elections are made by the partnership and apply to the partnership and section 987 gain or loss attributable to the partnership. *See* section 703(b); *see also* § 1.987–1(g) (additional rules regarding section 987 elections).

(ii) *Elections made by partner*—(A) *Annual recognition election in certain cases.* If a person ceases to be a partner in a partnership and becomes an original deferral QBU owner or original suspended loss QBU owner, that person (and not the partnership) may make the annual recognition election under § 1.987–5(b)(2) with respect to its deferred section 987 gain or loss or suspended section 987 loss that was originally attributable to a section 987 QBU of the partnership.

(B) *Election to recognize pretransition section 987 gain or loss ratably.* The election to recognize pretransition section 987 gain or loss ratably over the transition period under § 1.987–10(e)(5)(ii) is made by a partner, and not the partnership.

(d) *Basis adjustments*—(1) *In general.* When, and to the extent that, a partner recognizes section 987 gain or loss, defers section 987 gain or loss, or suspends section 987 loss attributable to the partnership, the partner's adjusted basis in the partnership is adjusted under the principles of section 705 as if the item of income or loss was part of the partner's distributive share of partnership items.

(2) *Tiered-partnership structures.* If a partner (upper-tier partner) that adjusts its basis in a partnership under paragraph (d)(1) of this section owns the partnership indirectly through one or more other partnerships, the partner adjusts its basis in the partnership in which it owns a direct interest, and that partnership adjusts its basis in the partnership in which it owns a direct interest, with similar rules applying to each successive partnership through which the upper-tier partner owns its interest in the lower-tier partnership to which the section 987 gain or loss was

attributable. The adjustment with respect to an interest in a lower-tier partnership constitutes a basis adjustment solely with respect to the partner that adjusts its basis in the upper-tier partnership under paragraph (d)(1) of this section.

(e) through (f) [Reserved]

(g) *S corporations treated as partnerships.* For purposes of the section 987 regulations, S corporations are treated in the same manner as partnerships and shareholders of S corporations are treated in the same manner as partners of partnerships. Thus, for example, if an S corporation is the owner of a section 987 QBU, the unrecognized section 987 gain or loss of the section 987 QBU would be allocated annually to its shareholders.

(h) *Examples.* The following examples illustrate the principles of this section. For purposes of these examples, DC1 and DC2 are domestic corporations, FC1 and FC2 are controlled foreign corporations that use the euro as their functional currency, DE1 and DE2 are disregarded entities, Business A is an eligible QBU that has the euro as its functional currency, and Business B is an eligible QBU that has the pound as its functional currency. Each person is a calendar year taxpayer. Except as otherwise indicated, no section 987 elections are in effect during any of the periods described in the examples. Exchange rates used in these examples are selected for the purpose of illustrating the principles of this section and no inference is intended by their use.

(1) *Example 1*—(i) *Facts.* DC1 wholly owns FC1 and DC2 wholly owns FC2. FC1 and FC2 are not related within the meaning of section 267(b) or 707(b). FC1 and FC2 each own a 50 percent interest in P, a foreign partnership. P owns 100 percent of DE1, which owns Business A. P also owns 100 percent of DE2, which owns Business B. The partnership agreement provides that FC1 and FC2 will each be allocated 50 percent of the profits and losses from both Business A and Business B. P's functional currency is the euro.

(ii) *Analysis.* Because P's two partners, FC1 and FC2, are not related within the meaning of section 267(b) or 707(b), P is not treated as a section 987 aggregate partnership under § 1.987–1(h). As a result, pursuant to § 1.987–1(b)(5), P is the owner of Business A and Business B because it has direct ownership of Business A and Business B, each of which is an eligible QBU. Because Business A is an eligible QBU with the same functional currency as its owner, P, Business A is not a section 987 QBU § 1.987–1(b)(3)(i). However, Business B is an eligible QBU with a functional currency that is different from the functional currency of its owner, P. As a result, Business B is a section 987 QBU under § 1.987–1(b)(3)(i), and P is its owner under § 1.987–1(b)(5) and paragraph (b) of this section.

(2) *Example 2*—(i) *Facts.* The facts are the same as in paragraph (h)(1) of this section (*Example 1*). In year 1, P has unrecognized section 987 gain (determined under § 1.987–4(d)) with respect to Business B of €100. In year 2, P has unrecognized section 987 loss with respect to Business B of €60. In year 3, P has unrecognized section 987 loss with respect to Business B of €120. In year 3, Business B transfers €50 to P on December 31. Following the transfer, its gross assets are €450. There are no other transfers between Business B and P in year 3.

(ii) *Analysis*—(A) *Partner's net unrecognized section 987 gain or loss.* Pursuant to paragraph (c)(1) of this section, in each of years 1, 2, and 3, P allocates to FC1 and FC2 their respective shares of the unrecognized section 987 gain or loss for the P taxable year with respect to its section 987 QBU, Business B. FC1 and FC2's share of the unrecognized section 987 gain or loss in each taxable year is based on their distributive share of the profits or losses with respect to Business B. Accordingly, in year 1, P allocates unrecognized section 987 gain of €50 to each of FC1 and FC2; in year 2, P allocates unrecognized section 987 loss of €30 to each of FC1 and FC2; and in year 3, P allocates unrecognized section 987 loss of €60 to each of FC1 and FC2. As a result, in year 3, before taking into account any amount recognized under § 1.987–5, FC1 and FC2 each have net unrecognized section 987 loss with respect to Business B of €40 (€50 − €30 − €60) under § 1.987–4(b) and paragraphs (c)(1) and (2) of this section.

(B) *Recognition of section 987 loss.* Because Business A distributed €50 to P in year 3, P's remittance proportion is 10 percent (€50 over the sum of €450 and €50) under § 1.987–5(b). As a result, each partner, FC1 and FC2, recognizes 10 percent of its net unrecognized section 987 loss with respect to Business B under § 1.987–5(a) and paragraph (c)(3) of this section. Accordingly, FC1 and FC2 each recognize €4 (€40 × 10 percent) section 987 loss in year 3 and have net accumulated unrecognized section 987 loss of €36 (€40 − €4) in year 4. FC1's adjusted basis in its partnership interest is reduced by €4 and FC2's adjusted basis in its partnership interest is reduced by €4 under the principles of section 705, under paragraph (d)(1) of this section.

(3) *Example 3*—(i) The facts are the same as in paragraph (h)(2) of this section (*Example 2*), except that in years 1 through 3, FC1 has a current rate election in effect and FC2 has an annual recognition election in effect.

(ii) *Analysis.* The analysis is the same as in paragraph (h)(2) of this section (*Example 2*). Because P does not have a current rate election in effect, FC1 can recognize the section 987 loss of €4 in year 3 without limitation under § 1.987–11(e) pursuant to paragraph (c)(5)(i) of this section. Similarly, because P does not have an annual recognition election in effect, while FC2 is a partner in P, FC2 does not recognize its section 987 gain or loss with respect to Business B on an annual basis pursuant to paragraphs (c)(5)(i) and (c)(5)(ii)(A) of this section.

(4) *Example 4*—(i) *Facts.* The facts are the same as in paragraph (h)(2) of this section (*Example 2*), except that FC2 has the Japanese yen as its functional currency during all relevant time periods. The yearly average exchange rate is €1 = ¥150 in year 1; €1 = ¥175 in year 2; and €1 = ¥125 in year 3.

(ii) *Analysis.* Each year, FC2 converts its share of P's unrecognized section 987 gain or loss into yen at the yearly average exchange rate pursuant to paragraph (c)(1)(i) of this section. As a result, in year 1, FC2's share of the unrecognized section 987 gain with respect to Business B is ¥7,500 (€50 section 987 gain converted to yen at the yearly average exchange rate of €1 = ¥150); in year 2, FC2's share of the unrecognized section 987 loss with respect to Business B is ¥5,250 (€30 section 987 loss converted to yen at the yearly average exchange rate of €1 = ¥175); and in year 3, FC2's share of the unrecognized section 987 loss with respect to Business B is ¥7,500 (€60 section 987 loss converted to yen at the yearly average exchange rate of €1 = ¥125). In year 3, FC2's net unrecognized section 987 loss with respect to Business B is ¥5,250 (¥7,500 − ¥5,250 − ¥7,500). As explained in paragraph (h)(2)(i)(B) of this section (*Example 2*), P's remittance proportion with respect to Business B is 10 percent. Therefore, FC2 recognizes section 987 loss of ¥525 under § 1.987–5(a) and paragraph (c)(3) of this section. FC2's net accumulated unrecognized section 987 loss with respect to Business B in year 4 is ¥4,725 (¥5250 − ¥525). FC2's adjusted basis in its partnership interest is reduced by ¥525 under the principles of section 705, under paragraph (d)(1) of this section.

§ 1.987–7B [Amended]

■ 14. In newly redesignated § 1.987–7B amend paragraph (a) by removing the language ''§ 1.987–1(b)(4)(ii)'' and adding the language ''§ 1.987–1(b)(5)(ii)'' in its place.

■ 15. Section 1.987–7C is added to read as follows:

§ 1.987–7C Transitioning between partnership and section 987 aggregate partnership treatment.

(a) *In general.* This section provides rules for when a partnership becomes or ceases to be a section 987 aggregate partnership. Paragraph (b) of this section provides transition rules regarding partnerships that cease to be section 987 aggregate partnerships but continue to be partnerships. Paragraph (c) of this section provides transition rules regarding partnerships that were not section 987 aggregate partnerships but become section 987 aggregate partnerships. *See* § 1.987–1(h) for the definition of a section 987 aggregate partnership.

(b) *Partnership ceases to be a section 987 aggregate partnership*—(1) *In general.* Solely for purposes of section 987, when a partnership ceases to be a section 987 aggregate partnership but continues to be a partnership, each eligible QBU (*pre-termination QBU*) of a partner owned indirectly through the section 987 aggregate partnership is deemed to terminate and transfer all its assets and liabilities to the partnership (the *deemed termination*) and the partnership is then treated as forming each of its eligible QBUs (each, a *post-termination QBU*) and transferring to each post-termination QBU the assets and liabilities of the post-termination QBU (including those assets and liabilities that were assets and liabilities of a pre-termination QBU).

(2) *Section 987 gain or loss with respect to pre-termination QBU.* Notwithstanding the deemed termination described in paragraph (b)(1) of this section, if, immediately before the deemed termination, a partner had any net unrecognized section 987 gain or loss or suspended section 987 loss with respect to a pre-termination QBU that was a section 987 QBU, and after the deemed termination, the assets and liabilities of the pre-termination QBU are assets and liabilities of a post-termination QBU, then either paragraph (b)(2)(i) or (ii) of this section applies.

(i) *Post-termination QBU is a section 987 QBU.* If the post-termination QBU is a section 987 QBU, then—

(A) Section 1.987–12 (deferral of section 987 gain and loss) does not apply to the deemed termination; and

(B) The partner's net unrecognized section 987 gain or loss or suspended section 987 loss with respect to the pre-termination QBU is not recognized and instead becomes net unrecognized section 987 gain or loss or suspended section 987 loss with respect to the post-termination QBU that is treated as having been allocated to the partner by the partnership.

(ii) *Post-termination QBU is not a section 987 QBU.* If paragraph (b)(2)(i) of this section does not apply, then § 1.987–13 (rules relating to suspended section 987 loss upon termination) is applied to the transactions described in paragraph (b)(1) of this section as if the partner had transferred the assets and liabilities of the pre-termination QBU to the partnership. Thus, if the partner had suspended section 987 loss with respect to the pre-termination QBU, § 1.987–13(b) may apply to the deemed transfer and the post-termination QBU may be a successor suspended loss QBU. *See* §§ 1.987–5, 1.987–8, 1.987–11, and 1.987–13 for rules regarding when section 987 gain or loss is recognized on terminations.

(3) *Successor deferral QBUs and successor suspended loss QBUs.* If a section 987 aggregate partnership ceases to be a section 987 aggregate partnership (the *transition*)—

(i) If any pre-termination QBU was a successor deferral QBU before the transition, the successor deferral QBU is treated as transferring its assets and liabilities to the post-termination QBU that holds the assets and liabilities after the transition for purposes of §§ 1.987–12 and 1.987–13. *See* § 1.987–12(c)(2).

(ii) If any pre-termination QBU was a successor suspended loss QBU before the transition, the successor suspended loss QBU is treated as transferring its assets and liabilities to the post-termination QBU that hold the assets and liabilities after the transition for purposes of § 1.987–13. *See* § 1.987–13(c).

(4) *Timing.* If a partnership ceases to be a section 987 aggregate partnership within the meaning of § 1.987–1(h), the partnership continues to be treated as a section 987 aggregate partnership until this paragraph (b) is applied. This paragraph (b) is applied immediately after the transaction (or series of transactions) or event (or series of events) that causes the partnership to cease to be a section 987 aggregate partnership (the *transition*). Thus, for example, if person acquires an interest in a section 987 aggregate partnership from a partner, and the person is not related to the other partners within the meaning of section 267(b) or 707(b), first the section 987 regulations (such as § 1.987–2(c)(5)) are applied to the transition as if the partnership continued to be a section 987 aggregate partnership; then this paragraph (b) applies to the partnership and its partners (including the acquiring partner) and the partnership ceases to be a section 987 aggregate partnership.

(c) *Partnership becomes a section 987 aggregate partnership*—(1) *In general.* Solely for purposes of section 987, when a partnership that was not a section 987 aggregate partnership becomes a section 987 aggregate partnership, each eligible QBU (*pre-termination QBU*) of the partnership is deemed to terminate and transfer all of its assets and liabilities to the partnership (the *deemed termination*) and the partnership is treated as forming each eligible QBU (*post-termination QBU*) that is indirectly owned by a partner (the *partner-owner*) and transferring to each post-termination QBU the partner-owner's share of the assets and liabilities of the partnership's eligible QBU .

(2) *Section 987 gain or loss with respect to pre-termination QBU.* Notwithstanding the deemed termination described in paragraph (c)(1) of this section, if a partner-owner had any net unrecognized section 987 gain or loss or suspended section 987 loss with respect to a pre-termination QBU that was a section 987 QBU, then either paragraph (c)(2)(i) or (ii) of this section applies.

(i) *Post-termination QBU is a section 987 QBU.* If, after the deemed termination, the partner-owner's indirectly owned post-termination QBU that relates to its share of the assets and liabilities of the pre-termination QBU is a section 987 QBU of the partner-owner, then—

(A) Section 1.987–12 does not apply to the deemed termination of the pre-termination QBU; and

(B) The partner-owner's net unrecognized section 987 gain or loss or suspended section 987 loss with respect to the pre-termination QBU is not recognized and instead becomes net unrecognized section 987 gain or loss or suspended section 987 loss with respect to the post-termination QBU.

(ii) *Post-termination QBU is not a section 987 QBU.* If paragraph (c)(2)(i) of this section does not apply, then paragraphs (c)(2)(ii)(A) and (B) of this section are applied sequentially.

(A) First, paragraph (c)(2)(i) of this section is applied as if the post-termination QBU was a section 987 QBU (the *deemed section 987 QBU*) after the deemed termination.

(B) Second, the section 987 regulations are applied as if the deemed section 987 QBU had transferred its assets and liabilities to the post-termination QBU. Thus, if the partner-owner had suspended section 987 loss with respect to the pre-termination QBU, § 1.987–13(b) may apply to the deemed transfer and the post-termination QBU may be a successor suspended loss QBU. *See* §§ 1.987–5, 1.987–8, 1.987–11, and 1.987–13 for rules regarding when section 987 gain or loss is recognized on terminations.

(3) *Successor deferral QBUs and successor suspended loss QBUs.* If a partnership that was not a section 987 aggregate partnership becomes a section 987 aggregate partnership (the *transition*)—

(i) If the partnership owned any successor deferral QBUs before the transition, each successor deferral QBU is treated as transferring its assets and liabilities to the indirectly owned QBUs that hold the assets and liabilities after the transition for purposes of §§ 1.987–12 and 1.987–13. *See* § 1.987–12(c)(2).

(ii) If the partnership owned any successor suspended loss QBUs before the transition, each successor suspended loss QBU is treated as transferring its assets and liabilities to the indirectly owned QBUs that hold the assets and liabilities after the transition for purposes of § 1.987–13. *See* § 1.987–13(c).

(iii) If the partnership was an original deferral QBU owner with respect to a successor deferral QBU before the transition, each partner that has deferred section 987 gain or loss with respect to the successor deferral QBU becomes an original deferral QBU owner with respect to the successor deferral QBU for purposes of § 1.987–12.

(iv) If the partnership was an original suspended loss QBU owner with respect to a successor suspended loss QBU before the transition, each partner that has suspended section 987 loss with respect to the successor suspended loss QBU becomes an original suspended loss QBU owner with respect to the successor suspended loss QBU.

(4) *Timing.* If a partnership that was not a section 987 aggregate partnership becomes a section 987 aggregate partnership within the meaning of § 1.987–1(h), the partnership is not treated as a section 987 aggregate partnership until this paragraph (c) is applied. This paragraph (c) is applied immediately after the transaction (or series of transactions) or event (or series of events) that causes the partnership to become a section 987 aggregate partnership (the *transition*). Thus, for example, if a person acquires an interest in a partnership that is not a section 987 aggregate partnership from a partner, and as a result of the acquisition, all of the partners are related within the meaning of section 267(b) or 707(b), first the section 987 regulations (such as § 1.987–7A(e)) are applied to the transition as if the partnership was not a section 987 aggregate partnership; then this paragraph (c) applies to the partnership and its partners (including the acquiring partner) and the partnership becomes a section 987 aggregate partnership.

■ 16. Section 1.987–8 is amended by:
■ a. Adding a fourth sentence after the third sentence in paragraph (a);
■ b. Revising paragraph (b) introductory text;
■ c. In paragraph (b)(2) in the second sentence removing the language ''shall be'' and adding the language ''is'' in its place and revising the last sentence;
■ d. In paragraph (b)(3) in the first sentence removing the language ''(as defined in section 957)'';
■ e. Adding paragraphs (b)(5) and (6);
■ f. Revising paragraph (c);
■ g. In paragraph (d) removing the text ''For further guidance, see § 1.987–8T(d)'';
h. Revising the second and third sentences in paragraph (e);
■ i. Designating *Examples 1* through *7* of paragraph (f) as paragraphs (f)(1) through (7).
■ j. In newly designated paragraph (f)(1):
■ i. Removing the language ''2021'' wherever it appears and adding the language ''year 1'' in its place; and
■ ii. Removing the language ''2022'' wherever it appears and adding the language ''year 2'' in its place;
■ k. Adding the language ''the'' before ''Business A section 987 QBU'' in the last sentence of newly designated paragraph (f)(1)(ii);
■ l. Revising newly designated paragraph (f)(3);
■ m. In newly designated paragraph (f)(4)(i), removing the language ''transfers'' and adding the language ''distributes'' in its place;
■ n. Removing and reserving newly designated paragraph (f)(5);
■ o. In newly designated paragraph (f)(6):
■ i. Removing the language ''2021'' wherever it appears and adding the language ''year 1'' in its place; and
■ ii. Removing the language ''2026'' wherever it appears and adding the language ''year 6'' in its place;
■ p. In newly designated paragraph (f)(6)(ii)(A), removing the language ''§ 1.987–1(b)(4)(i)'' and adding the language ''§ 1.987–1(b)(5)'' in its place.

The revisions and additions read as follows:

§ 1.987–8 Termination of a section 987 QBU.

(a) * * * Paragraph (d) of this section is reserved. * * *.

(b) *In general.* Except as provided in paragraph (c) of this section, a section 987 QBU terminates if the conditions described in any one of paragraphs (b)(1) through (6) of this section are satisfied.

* * * * *

(2) * * * *See* paragraphs (f)(2), (5), and (6) of this section (*Examples 2, 5,* and *6*).

* * * * *

(5) *Section 987 QBU ceases to be an eligible QBU with a functional currency different from its owner.* The section 987 QBU ceases to be an eligible QBU that has a functional currency different from its owner. *See also* § 1.985–5(d)(2) (section 987 QBU changes its functional currency to that of its owner) and (e)(4)(iii) (owner changes its functional currency to that of its section 987 QBU).

(6) *Change in form of ownership.* The owner of the section 987 QBU changes its form of ownership of the section 987 QBU from direct ownership to indirect ownership, or from indirect ownership to direct ownership.

(c) *Transactions described in section 381(a)*—(1) *Liquidations.* Notwithstanding paragraph (b) of this section, a termination does not occur when the owner (*distributor*) of a section 987 QBU ceases to exist in a liquidation described in section 332 pursuant to which it transfers the section 987 QBU to another corporation (*distributee*), except in the following cases:

(i) The distributor is a domestic corporation and the distributee is a foreign corporation.

(ii) The distributor is a foreign corporation and the distributee is a domestic corporation.

(iii) The distributor and the distributee are both foreign corporations and the functional currency of the distributee is the same as the functional currency of the distributor's section 987 QBU.

(2) *Reorganizations.* Notwithstanding paragraph (b) of this section, a termination does not occur when the owner (*transferor*) of the section 987 QBU ceases to exist in a reorganization described in section 381(a)(2) pursuant to which it transfers the section 987 QBU to another corporation (*acquiring corporation*), except in the following cases:

(i) The transferor is a domestic corporation and the acquiring corporation is a foreign corporation.

(ii) The transferor is a foreign corporation and the acquiring corporation is a domestic corporation.

(iii) The transferor is a controlled foreign corporation immediately before the transfer, the acquiring corporation is a foreign corporation that is not a controlled foreign corporation immediately after the transfer, and the acquiring corporation was related to the transferor within the meaning of section 267(b) immediately before the transfer.

(iv) The transferor and the acquiring corporation are foreign corporations and the functional currency of the acquiring corporation is the same as the functional currency of the transferor's section 987 QBU.

* * * * *

(e) * * * Thus, except as otherwise provided in the section 987 regulations, a termination generally results in the recognition of any net unrecognized section 987 gain or loss of the section 987 QBU (unless it is treated as deferred section 987 gain or loss or suspended section 987 loss). *See* §§ 1.987–5(c)(3) (generally recognizing section 987 gain or loss on a termination) and 1.987–11 through 1.987–13 (suspending section 987 gain or loss and deferring section 987 loss in certain instances).

(f) * * *

(3) *Example 3. Cessation of controlled foreign corporation status*—(i) *Facts.* Foreign parent (FP) is a foreign corporation that owns all the stock of U.S. Corp, a domestic corporation. U.S. Corp owns all of the stock of FC, a controlled foreign corporation as defined in section 957. FC is the owner of Business A. U.S. Corp liquidates into FP. FC no longer constitutes a controlled foreign corporation after the liquidation.

(ii) *Analysis.* Because FC ceases to qualify as a controlled foreign corporation as a result of a transaction after which persons that were related to FC within the meaning of section 267(b) immediately before the transaction collectively own sufficient interests in FC such that FC would continue to be considered a controlled foreign corporation if such persons were United States shareholders within the meaning of section 951(b), the Business A section 987 QBU terminates pursuant to paragraph (b)(3) of this section.

* * * * *

■ 17. Section 1.987–9 is revised to read as follows:

§ 1.987–9 Recordkeeping requirements.

(a) *In general.* An owner (or the authorized person on behalf of an owner) must keep a copy of each section 987 election made by or on behalf of an owner (if not required to be made on a form published by the Commissioner) and reasonable records sufficient to establish a section 987 QBU's taxable income or loss and section 987 gain or loss.

(b) *Supplemental information.* A person's obligation to maintain records under section 6001 and paragraph (a) of this section is not satisfied unless the following information is maintained in those records with respect to each section 987 QBU, successor deferral QBU, and successor suspended loss QBU for each taxable year:

(1) The amount of the items of income, gain, deduction, or loss attributed to the section 987 QBU in the functional currency of the section 987 QBU and its owner.

(2) The adjusted balance sheet of the section 987 QBU in the functional currency of the section 987 QBU and its owner.

(3) The exchange rates used to translate items of income, gain, deduction, or loss of the section 987 QBU into the owner's functional currency and, if a spot rate convention is used, the manner in which the convention is determined.

(4) The exchange rates used to translate the assets and liabilities of the section 987 QBU into the owner's functional currency and, if a spot rate convention is used, the manner in which the convention is determined.

(5) The amount of assets and liabilities transferred by the owner to the section 987 QBU determined in the functional currency of the owner.

(6) The amount of assets and liabilities transferred by the section 987 QBU to the owner determined in the functional currency of the owner.

(7) The amount of the unrecognized section 987 gain or loss for the taxable year.

(8) The amount of the net accumulated unrecognized section 987 gain or loss at the close of the taxable year.

(9) The amount of a remittance and the remittance proportion for the taxable year.

(10) The computations required under §§ 1.861–9(g) and 1.861–9T(g) for purposes of sourcing and characterizing section 987 gain or loss, deferred section 987 gain or loss, or suspended section 987 loss under § 1.987–6.

(11) The cumulative suspended section 987 loss in each recognition grouping.

(12) The outstanding deferred section 987 gain or loss in each recognition grouping.

(13) The transition information required to be determined under § 1.987–10(k).

(c) *Retention of records.* The records required by this section, or records that support the information required on a form published by the Commissioner regarding section 987, must be maintained and kept available for inspection by the Internal Revenue Service for so long as the contents thereof may become relevant in the administration of the Internal Revenue Code.

(d) *Information on a dedicated section 987 form.* Information necessary to determine section 987 gain or loss and section 987 taxable income or loss must be reported on a form prescribed for that purpose in accordance with the instructions accompanying that form. A taxpayer satisfies its obligation described in paragraphs (a) and (b) of this section to the extent that the taxpayer provides the specific information required on Form 8858 (or its successor) or other form prescribed for this purpose (including the information required by the instructions accompanying those forms).

■ 18. Section 1.987–10 is revised to read as follows:

§ 1.987–10 Transition rules.

(a) *Overview*—(1) *In general.* This section provides transition rules for the first taxable year in which the section 987 regulations apply. This paragraph (a) provides an overview of this section. Paragraph (b) of this section describes the scope of this section's application. Paragraph (c) of this section provides rules for determining the transition date. Paragraph (d) of this section provides rules relating to the application of the section 987 regulations after the transition date. Paragraph (e) of this section provides rules relating to the determination and recognition of pretransition gain or loss. Paragraph (f) of this section provides special rules for section 987 QBUs to which the fresh start transition method was applied. Paragraph (g) of this section provides transition rules relating to partnerships. Paragraph (h) of this section provides rules relating to the source and character of pretransition gain or loss. Paragraph (i) of this section is reserved. Paragraph (j) of this section provides adjustments to avoid double counting or omissions. Paragraph (k) of this section provides reporting requirements that apply in the taxable year beginning on the transition date. Paragraph (l) of this section provides examples illustrating the rules of this section.

(2) *Terms defined under prior § 1.987–12.* For purposes of this section, the

terms *deferral QBU, deferral QBU owner, successor QBU, outbound loss QBU, outbound section 987 loss,* and *qualified successo*r have the meaning provided in prior § 1.987–12.

(b) *Scope*—(1) *Owner of a section 987 QBU.* Except as provided in paragraph (f) of this section, any person that is an owner of a section 987 QBU on the applicable transition date must apply the rules of this section with respect to the section 987 QBU.

(2) *Deferral QBU owner and owner of outbound loss QBU.* Except as provided in paragraph (f) of this section, a deferral QBU owner or the owner of an outbound loss QBU must apply the rules of this section with respect to the deferral QBU or outbound loss QBU if the deferral event or outbound loss event occurred before the applicable transition date.

(c) *Transition date*—(1) *In general.* Except as provided in paragraph (c)(2) of this section, the transition date for a section 987 QBU, deferral QBU, or outbound loss QBU is the first day of the first taxable year described in § 1.987–14(a)(1), (b), or (c) to which this section applies.

(2) *Terminating QBU.* With respect to a terminating QBU, the transition date is the termination date, and this section is applied immediately before the termination. Until the transition date described in paragraph (c)(1) of this section, the owner of the terminating QBU must apply the section 987 regulations with respect to the terminating QBU, and any section 987 gain or loss attributable thereto, without regard to any section 987 elections.

(d) *Application of the section 987 regulations after the transition date—(1) Owner functional currency net value on the last day of the preceding taxable year.* Except as provided in paragraph (f) of this section, for purposes of applying § 1.987–4 in the taxable year beginning on the transition date, the owner functional currency net value of a section 987 QBU on the last day of the preceding taxable year under § 1.987–4(d)(1)(B) is determined by translating the assets and liabilities that are attributable to the section 987 QBU on the day before the transition date into the owner's functional currency at the spot rate applicable to the day before the transition date.

(2) *Determination of historic rate and adjustments required under the simplified inventory method.* If a current rate election is not in effect for the taxable year beginning on the transition date, the historic rate for historic items that are attributable to a section 987 QBU on the day before the transition date (other than non-LIFO inventory subject to the simplified inventory method under § 1.987–3(c)(2)(iv)(A)) is the spot rate applicable to the day before the transition date. The exchange rates used to apply § 1.987–3(c)(3) (adjustments required under the simplified inventory method) are determined as though a current rate election was in effect for the previous taxable year and was revoked for the taxable year beginning on the transition date.

(e) *Pretransition gain or loss*--(1) *In general.* Except as provided in paragraph (f) of this section, pretransition gain or loss is determined and recognized under this paragraph (e).

(2) *Amount of pretransition gain or loss for an owner that applied an eligible pretransition method*—(i) *Owner of a section 987 QBU.* If an owner of a section 987 QBU applied an eligible pretransition method with respect to the section 987 QBU, the amount of pretransition gain or loss with respect to the section 987 QBU is equal to the sum of the deemed termination amount described in paragraph (e)(2)(i)(A) of this section and the owner functional currency net value adjustment described in paragraph (e)(2)(i)(B) of this section. See paragraphs (l)(1) through (3) of this section (*Examples 1* through *3*) for an illustration of this rule.

(A) *Deemed termination amount.* The deemed termination amount is the amount of section 987 gain or loss that would have been recognized by the owner under the eligible pretransition method if the section 987 QBU terminated and transferred all of its assets and liabilities to the owner on the day before the transition date and prior § 1.987–12 did not apply.

(B) *Owner functional currency net value adjustment.* The owner functional currency net value adjustment may be either positive or negative and is equal to the amount described in paragraph (e)(2)(i)(B)(*1*) of this section reduced by the amount described in paragraph (e)(2)(i)(B)(*2*) of this section.

(*1*) The basis of the assets, reduced by the amount of liabilities, that are attributable to the section 987 QBU on the day before the transition date, translated into the owner's functional currency at the spot rate applicable to the day before the transition date.

(*2*) The basis of the assets, reduced by the amount of liabilities, that are attributable to the section 987 QBU on the day before the transition date, translated into the owner's functional currency at the pretransition translation rate on the day before the transition date.

(C) *Pretransition translation rate.* The pretransition translation rate is the rate that would be used under the eligible pretransition method to determine the basis of an asset or the amount of a liability in the hands of the owner of a section 987 QBU if the section 987 QBU transferred all of its assets and liabilities to the owner.

(ii) *Deferral QBU owner.* If a deferral QBU owner applied an eligible pretransition method with respect to the deferral QBU, the amount of pretransition gain or loss with respect to the deferral QBU is equal to the deferred section 987 gain or loss (determined under prior § 1.987–12) that was not recognized before the transition date with respect to the deferral QBU.

(iii) *Owner of an outbound loss QBU.* If the owner of an outbound loss QBU applied an eligible pretransition method with respect to the outbound loss QBU, the pretransition loss with respect to the outbound loss QBU is equal to the outbound section 987 loss that was not added to the basis of stock or recognized under prior § 1.987–12 before the transition date with respect to the outbound loss QBU.

(3) *Amount of pretransition gain or loss for an owner that did not apply an eligible pretransition method*—(i) *In general.* If the owner of a section 987 QBU did not apply an eligible pretransition method with respect to a section 987 QBU, the amount of pretransition gain or loss with respect to the section 987 QBU is determined under paragraph (e)(3)(ii) of this section. See paragraph (l)(4) of this section (*Example 4*) for an illustration of this rule.

(ii) *Computation of pretransition gain or loss.* With respect to a section 987 QBU described in paragraph (e)(3)(i) of this section, pretransition gain or loss is equal to the amount described in paragraph (e)(3)(ii)(A) of this section reduced by the amount described in paragraph (e)(3)(ii)(B) of this section.

(A) The sum of the owner's annual unrecognized section 987 gain or loss determined under paragraph (e)(3)(iii) of this section with respect to the section 987 QBU for all taxable years ending before the transition date in which it was the owner of the section 987 QBU.

(B) The total net amount of section 987 gain or loss recognized by the owner with respect to the section 987 QBU in all taxable years ending before the transition date.

(iii) *Annual unrecognized section 987 gain or loss.* An owner of a section 987 QBU described in paragraph (e)(3)(i) of this section determines annual unrecognized section 987 gain or loss with respect to a section 987 QBU under the rules of § 1.987–4(d), applied as though a current rate election was in effect for all relevant taxable years, and subject to the following modifications—

(A) Only § 1.987–4(d)(1) and (10) (steps 1 and 10) are applied;

(B) Section 1.987–4(d)(10) is applied by replacing ''paragraphs (d)(1) through (9)'' with ''paragraph (d)(1).''

(iv) *Deferral QBU owner.* If a deferral QBU owner did not apply an eligible pretransition method with respect to the deferral QBU, the pretransition gain or loss with respect to the deferral QBU is equal to the amount that would be determined under paragraph (e)(3)(ii) of this section with respect to the deferral QBU if the transition date was the day of the deferral event, reduced by the amount of deferred section 987 gain or loss (determined under prior § 1.987–12) recognized before the actual transition date.

(v) *Owner of an outbound loss QBU.* If the owner of an outbound loss QBU did not apply an eligible pretransition method with respect to the outbound loss QBU, the pretransition loss with respect to the outbound loss QBU is equal to the amount that would be determined under paragraph (e)(3)(ii) of this section with respect to the outbound loss QBU if the transition date was the day of the outbound loss event, reduced by any outbound section 987 loss recognized or added to the basis of stock under prior § 1.987–12 before the actual transition date.

(4) *Eligible pretransition method.* An eligible pretransition method means a method of applying section 987 before the transition date that is described in paragraphs (e)(4)(i) through (iii) of this section. An owner is treated as applying an eligible pretransition method with respect to a section 987 QBU only if it applied an eligible pretransition method with respect to each taxable year beginning before the transition date in which it was the owner of the section 987 QBU and any permissible change in pretransition method was applied in a reasonable manner that would not result in income, gain, deduction, or loss (including section 987 gain or loss) being taken into account more than once or not being taken into account.

(i) *Earnings and capital method.* An earnings and capital method is an eligible pretransition method if it is applied in a reasonable manner. For purposes of this paragraph (e)(4)(i), an earnings and capital method means a method of applying section 987 that requires section 987 gain or loss to be determined and recognized with respect to both the earnings of the section 987 QBU and capital contributed to the section 987 QBU (for example, the method prescribed in the 1991 proposed regulations under section 987). See paragraph (l)(1) of this section (*Example 1*) for an illustration of this rule.

(ii) *Other reasonable methods.* Any reasonable method of applying section 987 is an eligible pretransition method if it produces the same total amount of income over the life of the owner of a section 987 QBU as the method described in paragraph (e)(4)(i) of this section (taking into account the aggregate of section 987 gain or loss, section 987 taxable income or loss, and income or loss recognized by the owner of the section 987 QBU with respect to property transferred between the section 987 QBU and the owner or any QBU of the owner). See paragraph (l)(2) of this section (*Example 2*) for an illustration of this rule.

(iii) *Other earnings only methods.* An earnings only method (which determines section 987 gain or loss only with respect to the earnings of a section 987 QBU) that does not meet the requirements of paragraph (e)(4)(ii) of this section is an eligible pretransition method, provided that—

(A) The earnings only method was first applied by the owner on a return filed before November 9, 2023;

(B) The earnings only method was applied consistently to all section 987 QBUs of the owner; and

(C) The owner of the section 987 QBU otherwise applies section 987 in a reasonable manner. See paragraph (l)(3) of this section (*Example 3*) for an illustration of this rule.

(iv) *Reasonable method must require recognition of section 987 gain or loss upon a transfer of property from the section 987 QBU.* For purposes of this paragraph (e)(4), a method of applying section 987 is not reasonable unless the owner of the section 987 QBU recognizes section 987 gain or loss upon a transfer of property from the section 987 QBU to the owner (or recognizes section 987 gain or loss on an annual basis). Therefore, a method under which the owner of a section 987 QBU defers the recognition of section 987 gain or loss until the section 987 QBU is terminated, sold, or liquidated is not a reasonable method.

(v) *Anti-abuse rule.* If an owner changes its pretransition method of applying section 987 with a principal purpose of reducing its pretransition gain or increasing its pretransition loss, the Commissioner may redetermine pretransition gain or loss based on the owner's original method of applying section 987 or by treating the owner as not applying an eligible pretransition method.

(5) *Recognition of pretransition gain or loss*—(i) *In general.* Except as provided in paragraph (e)(5)(ii) of this section—

(A) Pretransition gain with respect to a section 987 QBU is treated as net accumulated unrecognized section 987 gain (within the meaning of § 1.987–4(c)). Pretransition gain with respect to a deferral QBU is treated as deferred section 987 gain and is attributed to one or more successor deferral QBUs under the principles of § 1.987–12(b)(2) and (c)(2).

(B) Pretransition loss with respect to a section 987 QBU, a deferral QBU, or an outbound loss QBU is treated as suspended section 987 loss with respect to the section 987 QBU, the deferral QBU, or the outbound loss QBU. In the case of a deferral QBU or outbound loss QBU, suspended section 987 loss is attributed to one or more successor suspended loss QBUs under the principles of § 1.987–13(b)(1) and (c)(1).

(ii) *Election to recognize pretransition section 987 gain or loss ratably over the transition period*—(A) *In general.* A taxpayer may elect to recognize pretransition gain or loss ratably over the transition period. If an election is made to recognize pretransition gain or loss ratably over the transition period, then paragraph (e)(5)(i) of this section does not apply, and each owner to which the election applies recognizes one tenth of its pretransition gain or loss with respect to each section 987 QBU, original deferral QBU, and outbound loss QBU in each taxable year for ten taxable years beginning with the taxable year that begins on the transition date. *See* § 1.987–1(g) for rules relating to section 987 elections (including consistency rules).

(B) *Special rules for inbound or outbound section 381(a) transactions*—(*1*) *Scope.* This paragraph (e)(5)(ii)(B) applies if a corporation (*acquiring corporation*) acquires the assets of an owner that is subject to an election under paragraph (e)(5)(ii)(A) of this section in a transaction described in section 381(a), and either the owner is a foreign corporation and the acquiring corporation is a domestic corporation or the owner is a domestic corporation and the acquiring corporation is a foreign corporation.

(*2*) *Recognition of pretransition gain or loss.* In the case of a transaction described in paragraph (e)(5)(ii)(B)(*1*) of this section, pretransition gain or loss that has not been recognized under paragraph (e)(5)(ii)(A) of this section ceases to be subject to the election to be recognized ratably over the transition period. Any unrecognized pretransition gain is recognized immediately before the transaction, and any unrecognized pretransition loss becomes suspended section 987 loss immediately before the transaction. As a result, the suspended section 987 loss may be recognized to the extent of section 987 gain recognized in the same recognition grouping pursuant to § 1.987–11(e). *See also* § 1.987–13(g) (providing that any remaining suspended section 987 loss does not carry over to the acquiring corporation upon an inbound transaction to which section 381(a) applies).

(6) *Predecessor of an owner*—(i) *In general.* For purposes of this paragraph (e), references to an owner of a section 987 QBU, an original deferral QBU owner, and the owner of an outbound loss QBU include a predecessor described in paragraph (e)(6)(ii) of this section.

(ii) *Predecessor.* If a corporation (*acquiring corporation*) becomes the owner of a section 987 QBU in a transaction described in section 381(a) in which the section 987 QBU does not terminate, the corporation that was the owner of the section 987 QBU immediately before the transaction is a predecessor of the acquiring corporation. If a corporation (*acquiring corporation*) becomes a qualified successor of a deferral QBU owner or the owner of an outbound loss QBU (each, a *transferor corporation*), the transferor corporation is a predecessor of the acquiring corporation. A predecessor of a corporation includes the predecessor of a predecessor of the corporation.

(f) *QBUs to which the fresh start transition method was applied*—(1) *In general.* Paragraphs (d) and (e) of this section do not apply with respect to any section 987 QBU, deferral QBU, or outbound loss QBU with respect to which the taxpayer applied the rules of prior § 1.987–10 (or applied § 1.987–10 of the 2006 proposed regulations in a reasonable manner) on a return filed before November 9, 2023 or pursuant to paragraph (f)(3) of this section.

(2) *Application of the section 987 regulations after the transition date*—(i) *Owner functional currency net value on the last day of the preceding taxable year.* For purposes of applying § 1.987–4 with respect to a section 987 QBU described in paragraph (f)(1) of this section for the taxable year beginning on the transition date, the owner functional currency net value of the section 987 QBU on the last day of the preceding taxable year under § 1.987–4(d)(1)(B) is the amount that was determined for the preceding taxable year under § 1.987–4(d)(1)(A) of the 2016 and 2019 section 987 regulations or the 2006 proposed section 987 regulations, as applicable.

(ii) *Determination of historic rate.* For purposes of applying the section 987 regulations with respect to historic items (other than inventory subject to the simplified inventory method under § 1.987–3(c)(2)(iv)(A)) that are attributable to the section 987 QBU on the day before the transition date, a taxpayer must use the same historic rates as were used under the taxpayer's application of the 2016 and 2019 section 987 regulations or the 2006 proposed section 987 regulations, as applicable, in place of the historic rates that otherwise would be determined under § 1.987–1(c)(3).

(iii) *Unrecognized section 987 gain or loss*—(A) *Net accumulated unrecognized section 987 gain or loss of a section 987 QBU.* In taxable years beginning on or after the transition date, for purposes of calculating the net accumulated unrecognized section 987 gain or loss of a section 987 QBU described in paragraph (f)(1) of this section under § 1.987–4(c)—

(*1*) Amounts determined under prior § 1.987–4(d) or under § 1.987–4(d) or 1.987–10 of the 2006 proposed section 987 regulations, as applicable, are included in amounts determined under § 1.987–4(d) for all prior taxable years; and

(*2*) Amounts taken into account under prior § 1.987–5(a) or under § 1.987–5(a) of the 2006 proposed section 987 regulations, as applicable, are included in amounts recognized under § 1.987–5(a) for all prior taxable years. For this purpose, amounts taken into account under prior § 1.987–5(a) or under § 1.987–5(a) of the 2006 proposed section 987 regulations, as applicable, are determined without regard to prior § 1.987–12 or prior § 1.987–12T.

(B) *Deferred section 987 gain or loss attributable to a successor deferral QBU.* In the taxable year beginning on the transition date, the outstanding deferred section 987 gain or loss (as determined under prior § 1.987–12) of a deferral QBU described in paragraph (f)(1) of this section becomes deferred section 987 gain or loss (within the meaning of § 1.987–12). The deferred section 987 gain or loss is attributed to one or more successor deferral QBUs under the principles of § 1.987–12(b)(2) and (c)(2).

(C) *Suspended section 987 loss attributable to a successor suspended loss QBU.* In the taxable year beginning on the transition date, outbound section 987 loss of an outbound loss QBU described in paragraph (f)(1) of this section that has not been recognized or added to the basis of stock under prior § 1.987–12 becomes suspended section 987 loss. The suspended section 987 loss is attributed to one or more successor suspended loss QBUs under the principles of § 1.987–13(b)(1) and (c)(1).

(3) *Taxpayers that are required to transition using the fresh start transition method.* If a taxpayer is subject to a consent agreement under which it is required to apply the fresh start transition method with respect to a section 987 QBU, then the taxpayer must apply the transition rules of prior § 1.987–10 to that section 987 QBU for the taxable year beginning on the transition date and immediately before the taxpayer applies this section. In applying this section, the taxpayer is treated as having applied prior § 1.987–10 to the section 987 QBU.

(g) *Partnerships*—(1) *Aggregate to entity.* If, for section 987 purposes, an aggregate approach to partnerships was applied to a partnership that owns an eligible QBU before the transition date and the partnership is not a section 987 aggregate partnership on the transition date, then the partnership is treated as a section 987 aggregate partnership at the beginning of the transition date for purposes of applying paragraphs (d) through (f) of this section and then as ceasing to be a section 987 aggregate partnership in a transition to which § 1.987–7C(b) applies.

(2) *Entity to aggregate.* If, for section 987 purposes, an entity approach to partnerships was applied to a partnership that owns an eligible QBU before the transition date and the partnership is a section 987 aggregate partnership on the transition date, then the partnership is treated as not being a section 987 aggregate partnership at the beginning of the transition date for purposes of applying paragraphs (d) through (f) of this section and then as becoming a section 987 aggregate partnership in a transition to which § 1.987–7C(c) applies.

(h) *Determination of source and character*—(1) *In general.* Except as provided in paragraph (h)(2) of this section, the source and character of pretransition gain or loss is determined under the rules of § 1.987–6. *See* § 1.987–6(b)(1) (timing of source and character determination).

(2) *Deferral QBU or outbound loss QBU.* Notwithstanding paragraph (h)(1) of this section and § 1.987–6, the source and character of pretransition gain or loss with respect to a deferral QBU or an outbound loss QBU is the same as the source and character of the outstanding deferred section 987 gain or loss (determined under prior § 1.987–12) of the deferral QBU or the outbound section 987 loss of the outbound loss QBU (determined under § 1.987–12(e) of

the 2016 and 2019 section 987 regulations).

(i) [Reserved]

(j) *Adjustments to avoid double counting or omissions.* If a difference between the treatment of any item under the section 987 regulations and the treatment of the item under the taxpayer's prior section 987 method would result in income, gain, deduction, or loss being taken into account more than once or not being taken into account, then the pretransition gain or loss of the section 987 QBU, as determined under paragraphs (e)(2) and (3) of this section, is adjusted to account for the difference.

(k) *Reporting*—(1) *In general.* Except as otherwise provided in this paragraph (k), a statement titled ''Section 987 Transition Information'' must be attached to an owner's timely filed return for the taxable year beginning on the transition date providing the following information for each QBU described in paragraph (k)(2) of this section:

(i) A description of each QBU, the QBU's principal place of business, and a description of the prior method used by the taxpayer to determine its section 987 gain or loss, deferred section 987 gain or loss (under prior § 1.987–12), or outbound section 987 loss with respect to the QBU, including an explanation as to whether such method was an eligible pretransition method.

(ii) The pretransition gain or loss with respect to each QBU and the computations used to determine pretransition gain or loss.

(iii) Whether the authorized person has elected to recognize pretransition gain or loss ratably over the transition period pursuant to paragraph (e)(5)(ii) of this section.

(iv) In the case of a statement filed by or on behalf of a partnership, a description of how section 987 was applied to the partnership, including whether an entity theory or aggregate theory of partnerships applied, and if an aggregate theory of partnerships applied, the owners of any QBUs consisting of assets and liabilities held by the partnership.

(v) With respect to each QBU for which any adjustment is made under paragraph (j) of this section, a description of each adjustment and the basis for computing the adjustment.

(vi) A list of the QBUs described in paragraph (f)(1) of this section, or a statement that no QBUs are described in paragraph (f)(1) of this section.

(2) *QBUs for which reporting is required*—(i) *In general.* Except as provided in paragraph (k)(2)(ii) of this section, the information described in paragraph (k)(1) of this section must be provided with respect to—

(A) Each section 987 QBU described in paragraph (b)(1) of this section;

(B) Each deferral QBU described in paragraph (b)(2) of this section and each of its successor deferral QBUs; and

(C) Each outbound loss QBU and each of the successor suspended loss QBUs to which suspended section 987 loss with respect to the outbound loss QBU is attributed.

(ii) *QBUs to which the fresh start transition method was applied.* A taxpayer is not required to provide the information described in paragraphs (k)(1)(i) through (iv) of this section with respect to a QBU described in paragraph (f)(1) of this section.

(3) *Attachments not required where information is reported on a form.* This paragraph (k) does not apply to the extent provided on a form or instructions published by the Commissioner.

(4) *Form 3115 not required.* Taxpayers that properly comply with the reporting requirements in this paragraph (k) are not required to file a Form 3115 in connection with the transition onto the section 987 regulations.

(l) *Examples.* The following examples illustrate the application of this section. For purposes of the examples, DC is a domestic corporation with the U.S. dollar as its functional currency and Branch is a section 987 QBU with the euro as its functional currency. DC has a taxable year ending December 31, and the transition date is January 1, year 4. For purposes of the examples, except as otherwise indicated, assume that no section 987 elections are in effect.

(1) *Example 1*—(i) *Facts*—(A) *Formation of Branch and Branch's operations.* DC formed Branch on November 30, year 1, with a contribution of €150. In year 1, Branch purchased a parcel of unimproved land for €100. In year 2, Branch earned €25. In year 3, Branch again earned €25. On June 30, year 3, Branch distributed €100 cash to DC, and DC immediately exchanged the €100 for $135.

(B) *Exchange rates.* The relevant exchange rates are shown below.

TABLE 1 TO PARAGRAPH (l)(1)(i)(B)—EXCHANGE RATES

	Spot rate	Yearly average exchange rate
November 30, Year 1	€1 = $1.	
December 31, Year 1	€1 = $1.10.	
December 31, Year 2	€1 = $1.20.	
June 30, Year 3	€1 = $1.35.	
December 31, Year 3	€1 = $1.40.	
Year 1		€1 = $1.05.
Year 2		€1 = $1.15.
Year 3		€1 = $1.25.

(C) *Pretransition method.* DC used the method prescribed in the 1991 proposed regulations under section 987 with respect to Branch before the transition date. Under this method, DC maintains an equity pool in euros (Branch's functional currency) and a basis pool in U.S. dollars (DC's functional currency). When Branch makes a remittance (whether out of earnings or capital), DC recognizes section 987 gain or loss equal to the difference between the amount of the remittance (translated into U.S. dollars at the spot rate on the date of the remittance) and the portion of the basis pool attributable to the remittance. DC's basis in assets distributed from Branch is equal to Branch's basis in the assets, translated into U.S. dollars at the spot rate on the date of the remittance. Branch's earnings are translated into U.S. dollars at the average exchange rate for the taxable year. DC otherwise applies section 987 in a reasonable manner.

(D) *Application of the pretransition method before the transition date.* For purposes of determining section 987 gain or loss recognized as a result of the June 30, year 3, remittance, DC was required to determine the amount in Branch's equity and basis pools. Branch's equity pool was equal to €200, and its basis pool was equal to $210, as shown below:

TABLE 2 TO PARAGRAPH (l)(1)(i)(D)—YEAR 3 EQUITY AND BASIS POOLS

	Equity pool	Translation rate	Basis pool
Contribution (9/30/Year 1)	€150	€1 = $1	$150
Year 2 Earnings	€25	€1 = $1.15	28.75
Year 3 Earnings	€25	€1 = $1.25	31.25
Total	€200		210

Because the remittance was equal to 50% of the equity pool (€100), 50% of the basis pool, or $105, was attributable to the remittance. The amount of the remittance was $135 (€100 translated at the spot rate on June 30, year 3, of €1 = $1.35). Therefore, in year 3, DC recognized section 987 gain of $30, equal to the difference between the amount of the remittance ($135) and the portion of the basis pool attributable to the remittance ($105). As a result of the remittance, the equity pool was reduced by the amount distributed (€100), and the basis pool was reduced by the portion of the basis pool attributable to the remittance ($105). Therefore, after the remittance, the equity pool was equal to €100, and the basis pool was equal to $105. In the hands of DC, the euros distributed had a basis of $135 (equal to the €100 distribution translated at the spot rate on June 30, year 3, of €1 = $1.35). DC did not recognize section 988 gain or loss when it exchanged the euros for $135.

(ii) *Analysis*—(A) *DC's method is an eligible pretransition method.* Before the transition date, DC followed the method prescribed in the 1991 proposed regulations under section 987 with respect to Branch. This method is an eligible pretransition method under paragraph (e)(4)(i) of this section. Therefore, DC determines its pretransition gain or loss with respect to Branch under paragraph (e)(2) of this section.

(B) *Pretransition gain or loss.* Under paragraph (e)(2) of this section, DC's pretransition gain or loss with respect to Branch is equal to the sum of the deemed termination amount described in paragraph (e)(2)(i)(A) of this section and the owner functional currency net value adjustment described in paragraph (e)(2)(i)(B) of this section. As explained in paragraphs (l)(1)(ii)(B)(*1*) and (*2*) of this section, DC's deemed termination amount is $35 and its owner functional currency net value adjustment is zero. Therefore, DC has $35 of pretransition gain with respect to Branch. Under paragraph (e)(5)(i)(A) of this section, the pretransition gain is treated as Branch's net accumulated unrecognized section 987 gain. However, if DC elects to recognize its pretransition gain ratably over the transition period under paragraph (e)(5)(ii) of this section, the pretransition gain is not treated as net accumulated unrecognized section 987 gain. Instead, DC recognizes $3.50 (one tenth of its pretransition gain) for each of the ten taxable years from year 4 through year 13.

(*1*) *Deemed termination amount.* Under paragraph (e)(2)(i)(A) of this section, the deemed termination amount is the amount of section 987 gain or loss that would have been recognized by DC under the eligible pretransition method if Branch terminated and transferred all its assets and liabilities to DC (the land with a basis of €100) on December 31, year 3, and prior § 1.987–12 did not apply. Under DC's eligible pretransition method, DC would have recognized section 987 gain of $35, determined by subtracting the remaining basis pool of $105 from the amount of the remittance of $140 (€100 translated at the spot rate on December 31, year 3, of €1 = $1.40). Therefore, the deemed termination amount is $35.

(*2*) *Owner functional currency net value adjustment.* On December 31, year 3, Branch had no liabilities and only one asset: land with a basis of €100. Under paragraph (e)(2)(i)(B) of this section, the owner functional currency net value adjustment is equal to the basis of the land, translated into U.S. dollars at the spot rate on December 31, year 3, reduced by the basis of the land, translated into U.S. dollars at the pretransition translation rate on December 31, year 3. Under paragraph (e)(2)(i)(C) of this section, the pretransition translation rate is the rate that would be used under DC's eligible pretransition method to determine the basis of the land in the hands of DC if Branch transferred the land to DC on December 31, year 3. Under DC's eligible pretransition method, if Branch transferred the land to DC, DC's basis in the land would be equal to Branch's basis (€100) translated at the spot rate on the date of the remittance. Therefore, the pretransition translation rate on December 31, year 3, is equal to the spot rate on December 31, year 3. Consequently, the owner functional currency net value adjustment is zero.

(C) *Determination of unrecognized section 987 gain or loss in year 4.* For purposes of determining unrecognized section 987 gain or loss in year 4 under § 1.987–4(d), the owner functional currency net value of Branch on the last day of year 3 is determined by translating the €100 basis of the land at the spot rate on December 31, year 3 (€1 = $1.40). Therefore, the owner functional currency net value of Branch on the last day of year 3 is $140.

(2) *Example 2*—(i) *Facts*—(A) *In general.* The facts and exchange rates are the same as in paragraph (l)(1) of this section (*Example 1*), except that DC uses an earnings only method with respect to Branch before the transition date, as described in paragraph (l)(2)(i)(B) of this section.

(B) *Pretransition method.* Under the earnings only method, DC maintains an equity pool in euros (Branch's functional currency) and a basis pool in U.S. dollars (DC's functional currency) with respect to Branch's earnings. DC also maintains separate equity and basis pools with respect to Branch's capital. Distributions are treated as being made first out of earnings and then out of capital. When Branch makes a remittance out of earnings, DC recognizes section 987 gain or loss equal to the difference between the amount of the remittance (translated into U.S. dollars at the spot rate on the date of the remittance) and the portion of the earnings basis pool attributable to the remittance. No section 987 gain or loss is recognized on a distribution out of capital. DC's basis in assets distributed out of Branch's earnings is equal to Branch's basis in the assets translated at the spot rate on the date of the remittance. DC's basis in assets distributed out of Branch's capital is equal to the portion of the capital basis pool attributable to the distribution. Branch's earnings are translated into U.S. dollars at the average exchange rate for the taxable year. DC otherwise applies section 987 in a reasonable manner.

(C) *Application of the pretransition method before the transition date.* On June 30, year 3, Branch distributed €100 cash to DC. Of this amount, €50 represented a remittance out of earnings, and €50 represented a distribution out of capital.

(*1*) *Remittance out of earnings.* For purposes of determining section 987 gain or loss recognized on the remittance, Branch's earnings equity pool was equal to €50, and its earnings basis pool was equal to $60, as shown below:

TABLE 3 TO PARAGRAPH (l)(2)(i)(C)(*1*)—EARNINGS EQUITY AND BASIS POOLS

	Equity pool	Translation rate	Basis pool
Year 2 Earnings	€25	€1 = $1.15	$28.75
Year 3 Earnings	€25	€1 = $1.25	31.25

TABLE 3 TO PARAGRAPH (l)(2)(i)(C)(*1*)—EARNINGS EQUITY AND BASIS POOLS—Continued

	Equity pool	Translation rate	Basis pool
Total	€50		60

Because Branch remitted 100% of the earnings equity pool (€50), the entire earnings basis pool, or $60, was attributable to the remittance. The value of the remittance was $67.50 (€50 translated at the spot rate on June 30, year 3, of €1 = $1.35). Therefore, in year 3, DC recognized section 987 gain of $7.50, equal to the difference between the value of the remittance ($67.50) and the portion of the basis pool attributable to the remittance ($60). As a result of the remittance, the earnings equity pool and the earnings basis pool were each reduced to zero. In the hands of DC, the €50 distributed out of earnings had a basis of $67.50 (€50 translated at the spot rate on June 30, year 3, of €1 = $1.35).

(*2*) *Distribution out of capital.* The basis of the €50 distributed out of capital was equal to the portion of the capital basis pool attributable to the distribution. For this purpose, the capital equity pool was equal to €150, and the capital basis pool was equal to $150, as shown below:

TABLE 4 TO PARAGRAPH (l)(2)(i)(C)(*2*)—CAPITAL EQUITY AND BASIS POOLS

	Equity pool	Translation rate	Basis pool
Contribution (6/30/Year 1)	€150	€1 = $1	$150
Total	€150		150

Because Branch distributed 33% of the capital equity pool, or €50, 33% of the capital basis pool, or $50, was attributable to the distribution. In the hands of DC, the €50 distributed out of capital had a basis of $50. As a result of the capital distribution, the capital equity pool was reduced to €100 and the capital basis pool was reduced to $100.

(*3*) *Section 988 gain recognized.* On June 30, year 3, DC exchanged €100 with an aggregate basis of $117.50 (equal to the sum of the $67.50 basis of the remittance out of earnings and the $50 basis of the distribution out of capital) for $135. Therefore, DC recognized $17.50 of gain under section 988.

(ii) *Analysis*—(A) *DC's method is an eligible pretransition method.* Before the transition date, DC followed a reasonable method of applying section 987 that would result in the same total amount of income over the life of DC ($125) as an earnings and capital method, as explained in paragraphs (l)(2)(ii)(A)(*1*) and (*2*) of this section. Therefore, this method is an eligible pretransition method under paragraph (e)(4)(ii) of this section. Consequently, DC determines its pretransition gain or loss with respect to Branch under paragraph (e)(2) of this section.

(*1*) *DC's total amount of income under its pretransition method.* Under DC's pretransition method, DC recognized $7.50 of section 987 gain and $17.50 of section 988 gain in year 3. In addition, on December 31, year 3, DC had $40 of embedded gain in its capital equity and basis pools (equal to the difference between its capital equity pool of €100, translated at the spot rate on December 31, year 3, of €1 = $1.40, and its capital basis pool of $100) which will be taken into account in the future (when Branch distributes property out of capital and the property is sold). DC also recognized $60 of earnings with respect to Branch ($28.75 in year 2 and $31.25 in year 3). Thus, DC's total income (recognized and unrecognized) with respect to Branch is $125.

(*2*) *DC's total amount of income under an earnings and capital method.* If DC had instead applied an earnings and capital method, as described in paragraph (l)(1)(i)(C) of this section (*Example 1*), DC would have recognized section 987 gain of $30 in year 3 and would not have recognized section 988 gain in year 3, as explained in paragraph (l)(1)(i)(D) of this section. On December 31, year 3, DC would have unrecognized section 987 gain in its equity and basis pools of $35 (see paragraph (l)(1)(ii)(B)(*1*) of this section (*Example 1*)). DC would also have recognized $60 of earnings with respect to Branch ($28.75 in year 2 and $31.25 in year 3). Thus, DC's total income (recognized and unrecognized) with respect to Branch is $125.

(B) *Pretransition gain or loss.* Under paragraph (e)(2) of this section, DC's pretransition gain or loss with respect to Branch is equal to sum of the deemed termination amount described in paragraph (e)(2)(i)(A) of this section and the owner functional currency net value adjustment described in paragraph (e)(2)(i)(B) of this section. As explained in paragraphs (l)(2)(ii)(B)(*1*) and (*2*) of this section, the deemed termination amount is zero and the owner functional currency net value adjustment is $40. Therefore, DC has $40 of pretransition gain with respect to Branch. Under paragraph (e)(5)(i)(A) of this section, the pretransition gain is treated as Branch's net accumulated unrecognized section 987 gain. However, if DC elects to recognize its pretransition gain ratably over the transition period under paragraph (e)(5)(ii) of this section, the pretransition gain is not treated as net accumulated unrecognized section 987 gain. Instead, DC recognizes $4 (one tenth of its pretransition gain) for each of the ten taxable years from year 4 through year 13.

(*1*) *Deemed termination amount.* Under paragraph (e)(2)(i)(A) of this section, the deemed termination amount is the amount of section 987 gain or loss that would have been recognized by DC under the eligible pretransition method if Branch terminated and transferred all of its assets and liabilities to DC on December 31, year 3, and prior § 1.987–12 did not apply. Under DC's eligible pretransition method, if Branch had transferred all of its assets and liabilities to DC, this would have been treated as a distribution out of capital. Under its eligible pretransition method, DC would not have recognized section 987 gain or loss on a distribution out of capital. Therefore, the deemed termination amount is zero.

(*2*) *Owner functional currency net value adjustment.* On December 31, year 3, Branch had no liabilities and only one asset: land with a basis of €100. Under paragraph (e)(2)(i)(B) of this section, the owner functional currency net value adjustment is equal to the basis of Branch's land, translated into U.S. dollars at the spot rate on December 31, year 3, reduced by the basis of Branch's land, translated into U.S. dollars at the pretransition translation rate on December 31, year 3. Under paragraph (e)(2)(i)(C) of this section, the pretransition translation rate is the rate that would be used under the eligible pretransition method to determine the basis of the land in the hands of DC if Branch transferred the land to DC. Under DC's eligible pretransition method, DC's basis in assets distributed from Branch is equal to the portion of the capital basis pool attributable to the distribution. If Branch transferred the land with a basis of €100 to DC on December 31, year 3, its remaining capital basis pool of $100 would be attributable to the distribution, and the land would have a basis of $100 in the hands of DC. Because the land had a basis of €100 in the hands of Branch, and would have a basis of $100 in the hands of DC if it were distributed on December 31, year 3, the pretransition translation rate is €1 = $1. The €100 basis of Branch's land, translated at the spot rate on December 31, year 3 of €1 = $1.40 is equal to $140. The €100 basis of Branch's land, translated at the pretransition translation rate on December 31, year 3 of €1 = $1 is equal to $100. Therefore, the owner functional currency net value adjustment is equal to $40 ($140 − $100).

(C) *Determination of unrecognized section 987 gain or loss in year 4.* For purposes of determining unrecognized section 987 gain or loss in year 4 under § 1.987–4(d), the owner functional currency net value of Branch on the last day of year 3 is determined by translating the €100 basis of the land at the spot rate on December 31, year 3 (€1 = $1.40). Therefore, the owner functional currency net value of Branch on the last day of year 3 is $140.

(3) *Example 3*—(i) *Facts*—(A) *In general.* The facts and exchange rates are the same as in paragraph (l)(1) of this section (*Example 1*), except that DC used an earnings only method with respect to Branch before the transition date, as described in paragraph (l)(3)(i)(B) of this section.

(B) *Pretransition method.* Under the earnings only method, DC maintains an equity pool in euros (Branch's functional currency) and a basis pool in U.S. dollars (DC's functional currency) with respect to Branch's earnings. However, DC does not maintain separate equity and basis pools with respect to Branch's capital. Distributions are treated as being made first out of earnings and then out of capital. When Branch makes a remittance out of earnings, DC recognizes section 987 gain or loss equal to the difference between the amount of the remittance (translated into U.S. dollars at the spot rate on the date of the remittance) and the portion of the earnings basis pool attributable to the remittance. No section 987 gain or loss is recognized on a distribution out of capital. Under DC's pretransition method, DC's basis in assets distributed by Branch (whether out of earnings or capital) is equal to Branch's basis in the assets translated at the spot rate on the date of the distribution. Branch's earnings are translated into U.S. dollars at the average exchange rate for the taxable year. DC first applied its earnings only method on a return filed before November 9, 2023. In addition, DC applied its earnings only method consistently to all of its section 987 QBUs and otherwise applied section 987 in a reasonable manner.

(C) *Application of the pretransition method before the transition date.* On June 30, year 3, Branch distributed €100 cash to DC. Of this amount, €50 represented a remittance out of earnings, and €50 represented a distribution out of capital.

(*1*) *Remittance out of earnings.* For purposes of determining section 987 gain or loss recognized on the remittance, Branch's earnings equity pool was equal to €50, and its earnings basis pool was equal to $60, as shown below:

TABLE 5 TO PARAGRAPH (l)(3)(i)(C)(*1*)—EARNINGS EQUITY AND BASIS POOLS

	Equity pool	Translation rate	Basis pool
Year 2 Earnings	€25	€1 = $1.15	$28.75
Year 3 Earnings	€25	€1 = $1.25	31.25
Total	€50		60

Because Branch remitted 100% of the earnings equity pool (€50), the entire earnings basis pool, or $60, was attributable to the remittance. The value of the remittance was $67.50 (€50 translated at the spot rate on June 30, year 3, of €1 = $1.35). Therefore, in year 3, DC recognized section 987 gain of $7.50, equal to the difference between the value of the remittance ($67.50) and the portion of the basis pool attributable to the remittance ($60). As a result of the remittance, the earnings equity pool and the earnings basis pool were each reduced to zero.

(*2*) *Basis of euros distributed.* In the hands of DC, the €100 distributed had a basis of $135 (€100 translated at the spot rate on June 30, year 3, of €1 = $1.35). DC did not recognize gain or loss under section 988 when it exchanged the €100 for $135.

(ii) *Analysis*—(A) *DC's method is an eligible pretransition method.* Unlike in paragraph (l)(2) of this section (*Example 2*), DC's earnings only method would not result in the same total amount of income over the life of DC as an earnings and capital method described in paragraph (e)(4)(i) of this section because DC does not maintain capital basis and equity pools and DC translates the basis of all property distributed from Branch at the spot rate on the distribution date. However, this method is an eligible pretransition method under paragraph (e)(4)(iii) of this section because DC first applied its earnings only method on a return filed before November 9, 2023, DC applied its earnings only method consistently to all of its section 987 QBUs, and otherwise applied section 987 in a reasonable manner. Consequently, DC determines its pretransition gain or loss with respect to Branch under paragraph (e)(2) of this section.

(B) *Pretransition gain or loss.* Under paragraph (e)(2) of this section, DC's pretransition gain or loss with respect to Branch is equal to sum of the deemed termination amount described in paragraph (e)(2)(i)(A) of this section and the owner functional currency net value adjustment described in paragraph (e)(2)(i)(B) of this section. As explained in paragraphs (l)(2)(ii)(B)(*1*) and (*2*) of this section, the deemed termination amount is zero and the owner functional currency net value adjustment is zero. Therefore, DC has no pretransition gain or loss with respect to Branch.

(*1*) *Deemed termination amount.* Under paragraph (e)(2)(i)(A) of this section, the deemed termination amount is the amount of section 987 gain or loss that would have been recognized by DC under the eligible pretransition method if Branch terminated and transferred all of its assets and liabilities to DC on December 31, year 3, and prior § 1.987–12 did not apply. Under DC's eligible pretransition method, if Branch had transferred all of its assets and liabilities to DC, it would have been treated as a distribution out of capital. Under its eligible pretransition method, DC would not have recognized section 987 gain or loss on a distribution out of capital. Therefore, the deemed termination amount is zero.

(*2*) *Owner functional currency net value adjustment.* On December 31, year 3, Branch has no liabilities and only one asset: land with a basis of €100. Under paragraph (e)(2)(i)(B) of this section, the owner functional currency net value adjustment is equal to the basis of the land, translated into U.S. dollars at the spot rate on December 31, year 3, reduced by the basis of the land, translated into U.S. dollars at the pretransition translation rate on December 31, year 3. Under paragraph (e)(2)(i)(C) of this section, the pretransition translation rate is the rate that would be used under DC's eligible pretransition method to determine the basis of the land in the hands of DC if Branch transferred the land to DC on December 31, year 3. Under DC's eligible pretransition method, if Branch transferred the land to DC, DC's basis in the land would be equal to Branch's basis (€100) translated at the spot rate on the date of the distribution. Therefore, the pretransition translation rate on December 31, year 3, is equal to the spot rate on December 31, year 3. Consequently, the owner functional currency net value adjustment is zero.

(C) *Determination of unrecognized section 987 gain or loss in year 4.* For purposes of determining unrecognized section 987 gain or loss in year 4 under § 1.987–4(d), the owner functional currency net value of Branch on the last day of year 3 is determined by translating the €100 basis of the land at the spot rate on December 31, year 3 (€1 = $1.40). Therefore, the owner functional currency net value of Branch on the last day of year 3 is $140.

(4) *Example 4*—(i) *Facts.* The facts and exchange rates are the same as in paragraph (l)(1) of this section (*Example 1*), except that DC did not apply section 987(3) with respect to Branch and did not recognize section 987 gain or loss with respect to Branch before the transition date.

(ii) *Analysis*—(A) *DC's method is not an eligible pretransition method.* Because DC did not apply section 987(3) with respect to Branch before the transition date, DC did not apply an eligible pretransition method under paragraph (e)(4) of this section. Therefore, DC determines pretransition gain or loss under paragraph (e)(3) of this section.

(B) *Pretransition gain or loss.* Under paragraph (e)(3) of this section, DC's pretransition gain or loss with respect to Branch is equal to the annual unrecognized section 987 gain or loss with respect to Branch for all taxable years ending before the transition date in which DC was the owner of Branch (that is, years 1 through 3), reduced by section 987 gain or loss recognized by DC before the transition date. As explained in paragraphs (l)(4)(ii)(C) through (E) of this section, DC's annual unrecognized section 987 gain for year 1 is $7.50, DC's annual unrecognized section 987 gain for year 2 is $16.25, and DC's annual unrecognized section 987 gain for year 3 is $23.75. DC did not recognize any section 987 gain or loss with respect to Branch before the transition date. Therefore, DC has $47.50 of pretransition gain with respect to Branch. Under paragraph (e)(5)(i)(A) of this section, the pretransition gain is treated as Branch's net accumulated unrecognized section 987 gain. However, if DC elects to recognize its pretransition gain ratably over the transition period under paragraph (e)(5)(ii) of this section, the pretransition gain is not treated as net accumulated unrecognized section 987 gain. Instead, DC recognizes $4.75 (one tenth of its pretransition gain) for each of the ten taxable years from year 4 through year 13.

(C) *Annual unrecognized section 987 gain or loss for year 1.* Under paragraph (e)(3)(iii) of this section, annual unrecognized section 987 gain or loss with respect to a section 987 QBU is determined under the rules of § 1.987–4(d), applied as though a current rate election was in effect for all relevant taxable years (such that all items are treated as marked items), but modified so that only §§ 1.987–4(d)(1) (change in owner functional currency net value) and 1.987–4(d)(10) (adjustment for residual increase or decrease to the balance sheet) are applied. As explained in paragraphs (l)(4)(ii)(C)(*1*) and (*2*) of this section, in year 1, the change in owner functional currency net value under § 1.987–4(d)(1) is an increase of $165, and there is a negative adjustment of $157.50 under § 1.987–4(d)(10). Therefore, DC's annual unrecognized section 987 gain for year 1 is $7.50.

(*1*) *Change in owner functional currency net value for year 1.* On December 31, year 1, Branch held land with a basis of €100 and €50 cash. Therefore, on the last day of year 1, Branch's owner functional currency net value is $165 (150 euros translated at the spot rate on December 31, year 1, of €1 = $1.10). Because Branch was formed in year 1, its owner functional currency net value on the last day of the preceding taxable year is zero. *See* § 1.987–4(d)(1)(iii). Therefore, the change in owner functional currency net value is an increase of $165.

(*2*) *Residual increase to the balance sheet for year 1.* Under § 1.987–4(d)(10), unrecognized section 987 gain or loss for a taxable year is decreased by any residual increase to the balance sheet (and increased by any residual decrease to the balance sheet), translated into the owner's functional currency at the yearly average exchange rate for the taxable year. For this purpose, the residual increase (or decrease) to the balance sheet is equal to the change in net value of the section 987 QBU, determined in the section 987 QBU's functional currency. On December 31, year 1, Branch held land with a basis of €100 euros and €50 cash. Therefore, on the last day of year 1, Branch has a net value (in its own functional currency) of €150. Because Branch was formed in year 1, its functional currency net value on the last day of the preceding taxable year is zero. *See* § 1.987–4(d)(1)(iii). Therefore, the residual increase to the balance sheet is €150. This results in a negative adjustment to annual unrecognized section 987 gain or loss of $157.50 for year 1 (equal to €150 translated at the yearly average exchange rate for year 1 of €1 = $1.05).

(D) *Annual unrecognized section 987 gain or loss for year 2.* As explained in paragraphs (l)(4)(ii)(D)(*1*) and (*2*) of this section, in year 2, the change in owner functional currency net value under § 1.987–4(d)(1) is an increase of $45, and there is a negative adjustment of $28.75 under § 1.987–4(d)(10). Therefore, DC's annual unrecognized section 987 gain for year 2 is $16.25.

(*1*) *Change in owner functional currency net value for year 2.* On December 31, year 2, Branch held land with a basis of €100 euros and €75 cash. Therefore, on the last day of year 2, Branch's owner functional currency net value is $210 (175 euros translated at the spot rate on December 31, year 2, of €1 = $1.20). As explained in paragraph (l)(4)(ii)(C)(*1*) of this section, Branch's owner functional currency net value on the last day of year 1 was $165. Therefore, the change in owner functional currency net value is an increase of $45.

(*2*) *Residual increase to the balance sheet for year 2.* On December 31, year 2, Branch held land with a basis of €100 euros and €75 cash. Therefore, on the last day of year 2, Branch has a net value (in its own functional currency) of €175. As explained in paragraph (l)(4)(ii)(C)(*2*) of this section, Branch had a net value of €150 on December 31, year 1. Therefore, the residual increase to the balance sheet is €25. This results in a negative adjustment to annual unrecognized section 987 gain or loss of $28.75 for year 2 (equal to a reduction of €25, translated at the yearly average exchange rate for year 2 of €1 = $1.15).

(E) *Annual unrecognized section 987 gain or loss for year 3.* As explained in paragraphs (l)(4)(ii)(E)(*1*) and (*2*) of this section, in year 3, the change in owner functional currency net value under § 1.987–4(d)(1) is a decrease of $70, and there is a positive adjustment of $93.75 under § 1.987–4(d)(10). Therefore, DC's annual unrecognized section 987 gain for year 3 is $23.75.

(*1*) *Change in owner functional currency net value for year 3.* On December 31, year 3, Branch held land with a basis of €100. Therefore, on the last day of year 3, Branch's owner functional currency net value is $140 (100 euros translated at the spot rate on December 31, year 3, of €1 = $1.40). As explained in paragraph (l)(4)(ii)(D)(*1*) of this section, Branch's owner functional currency net value on the last day of year 2 was $210. Therefore, the change in owner functional currency net value is a decrease of $70.

(*2*) *Residual decrease to the balance sheet for year 3.* On December 31, year 3, Branch held land with a basis of €100. Therefore, on the last day of year 3, Branch has a net value (in its own functional currency) of €100. As explained in paragraph (l)(4)(ii)(D)(*2*) of this section, Branch had a net value of €175 on December 31, year 2. Therefore, the residual decrease to the balance sheet is €75. This results in a positive adjustment to annual unrecognized section 987 gain or loss of $93.75 for year 3 (equal to €75, translated at the yearly average exchange rate for year 3 of €1 = $1.25).

(F) *Determination of unrecognized section 987 gain or loss in year 4.* For purposes of determining unrecognized section 987 gain or loss in year 4 under § 1.987–4(d), the owner functional currency net value of Branch on the last day of year 3 is determined by translating the €100 basis of the land at the spot rate on December 31, year 3 (€1 = $1.40). Therefore, the owner functional currency net value of Branch on the last day of year 3 is $140.

■ 19. Section 1.987–11 is revised to read as follows:

§ 1.987–11 Suspended section 987 loss relating to certain elections; loss-to-the-extent-of-gain rule.

(a) *In general.* This section provides rules relating to suspended section 987 loss. This paragraph (a) provides an overview of this section. Paragraph (b) of this section provides rules for computing the cumulative suspended section 987 loss with respect to a section 987 QBU or successor suspended loss QBU. Paragraph (c) of this section provides rules that suspend section 987 loss that would otherwise be recognized when a current rate election is in effect. Paragraph (d) of this section provides rules that treat net unrecognized section 987 loss and deferred section 987 loss as suspended section 987 loss when an annual recognition election is made or a current rate election is revoked. Paragraph (e) of this section describes the extent to which suspended section 987 loss is recognized under a loss-to-the-extent-of-gain rule. Paragraph (f) of this section provides rules for determining recognition groupings based on the source and character of section 987 gain or loss. Paragraph (g) of this section provides examples illustrating the rules of this section.

(b) *Cumulative suspended section 987 loss in a recognition grouping*—(1) *In general.* The cumulative suspended section 987 loss in a recognition grouping with respect to a section 987 QBU or a successor suspended loss QBU for the current taxable year is equal to the cumulative suspended section 987 loss in the recognition grouping for the prior taxable year decreased by the amount of suspended section 987 loss in the recognition grouping that was recognized with respect to the QBU under paragraph (e) of this section or under § 1.987–13(b) through (d) in the prior taxable year, and increased by the amount that becomes suspended section 987 loss in the recognition grouping with respect to the QBU in the current taxable year. If the taxable year is the first taxable year of the section 987 QBU (or the first taxable year in which the section 987 regulations apply), the cumulative suspended section 987 loss for the prior taxable year is zero. An owner or original suspended loss QBU owner's total cumulative suspended section 987 loss in a recognition grouping is equal to the sum of its cumulative suspended section 987 gain or loss with respect to each section 987 QBU and successor suspended loss QBU. *See* § 1.987–13(g) for rules preventing the carryover of suspended section 987 loss in connection with certain inbound transactions.

(2) *Combined QBU.* For purposes of paragraph (b)(1) of this section, in the taxable year of a combination, the cumulative suspended section 987 loss in a recognition grouping with respect to a combined QBU for the prior taxable year is equal to the sum of the cumulative suspended section 987 loss in the recognition grouping with respect to each combining QBU for the prior taxable year; the suspended section 987 loss in a recognition grouping with respect to a combined QBU that was recognized in the prior taxable year is equal to sum of the suspended section 987 loss in the recognition grouping with respect to each combining QBU that was recognized in the prior taxable year.

(3) *Separated QBU.* For purposes of paragraph (b)(1) of this section, in the taxable year of a separation, the cumulative suspended section 987 loss in a recognition grouping with respect to a separated QBU for the prior taxable year is equal to the cumulative suspended section 987 loss in the recognition grouping with respect to the separating QBU for the prior taxable year multiplied by the separation fraction; the suspended section 987 loss in a recognition grouping with respect to a separated QBU that was recognized in the prior taxable year is equal to the suspended section 987 loss in the recognition grouping with respect to the separating QBU that was recognized in the prior taxable year multiplied by the separation fraction.

(c) *Suspension of section 987 loss for taxable years in which a current rate election is in effect and an annual recognition election is not in effect.* In a taxable year in which a current rate election is in effect and an annual recognition election is not in effect, to the extent that an owner's net unrecognized section 987 loss with respect to a section 987 QBU would otherwise be recognized under § 1.987–5 (including pursuant to § 1.987–12(b)), or its deferred section 987 loss would otherwise be recognized under § 1.987–12(c), the net unrecognized section 987 loss or deferred section 987 loss is not recognized by the owner and instead becomes suspended section 987 loss. See paragraph (g)(1) of this section (*Example 1*) for an illustration of this rule.

(d) *Suspension of net unrecognized section 987 loss upon making or revoking certain elections*—(1) *Making an annual recognition election.* At the beginning of the first taxable year for which an annual recognition election is in effect, net accumulated unrecognized section 987 loss and deferred section 987 loss are converted into suspended section 987 loss if either—

(i) A current rate election was in effect for the immediately preceding taxable year; or

(ii) A current rate election was not in effect for the immediately preceding taxable year and, as of the beginning of the taxable year, the sum of the owner's net accumulated unrecognized section 987 loss and deferred section 987 loss exceeds the sum of the owner's net accumulated unrecognized section 987 gain and deferred section 987 gain by more than $5 million.

(2) *Revoking a current rate election.* In the first taxable year in which a current rate election ceases to be in effect, net accumulated unrecognized section 987 loss and deferred section 987 loss are converted into suspended section 987 loss. See paragraph (g)(2) of this section (*Example 2*) for an illustration of this rule.

(e) *Recognition of suspended section 987 loss to the extent of recognition of section 987 gain*—(1) *In general.* Subject to paragraph (e)(2) of this section, in a taxable year of an owner of a section 987 QBU or an original suspended loss QBU owner, the owner recognizes a portion of its total cumulative suspended section 987 loss in a single recognition grouping to the extent of the amount of section 987 gain in that recognition grouping that the owner recognizes in that taxable year (the *loss-to-the-extent-of-gain rule*). Because the recognition groupings are determined on the basis of the initial assignment of section 987 gain or loss under § 1.987–6(b)(2)(i), the loss-to-the-extent-of-gain rule is applied on the basis of the initial assignment of section 987 gain or loss. The amount of cumulative suspended section 987 loss in a single recognition grouping that the owner or original suspended loss QBU owner recognizes in the taxable year is treated as attributable to each section 987 QBU or successor suspended loss QBU in proportion to its suspended section 987 loss in that recognition grouping. See paragraph (g)(1) of this section (*Example 1*) for an illustration of this rule.

(2) *Special rule for taxable years in which both an annual recognition election and a current rate election are in effect.* This paragraph (e)(2) only applies to suspended section 987 loss in taxable years in which both a current rate election and an annual recognition election are in effect.

(i) *Loss to the extent of gain rule limited to net gain, not gross gain.* For purposes of applying paragraph (e)(1) of this section, references to section 987 gain in a recognition grouping are treated as references to net section 987 gain in that recognition grouping.

(ii) *Net section 987 gain in a recognition grouping.* For purposes of this paragraph (e), net section 987 gain in a recognition grouping is equal to the total section 987 gain recognized and taken into account by the owner in that recognition grouping during the testing period, reduced by the total section 987 loss recognized and taken into account by the owner in that recognition grouping during the testing period (other than suspended section 987 loss recognized in the current taxable year).

(iii) *Testing period.* For purposes of this paragraph (e), the testing period with respect to any suspended section 987 loss means the current taxable year and all prior taxable years during which both—

(A) The section 987 loss was a suspended section 987 loss of the owner (including the taxable year in which it became a suspended section 987 loss of the owner); and

(B) A current rate election and annual recognition election were in effect.

(iv) *Ordering rule.* If an owner has any suspended section 987 loss that has a different testing period than other suspended section 987 loss (for example, because the owner succeeded to and took into account additional suspended section 987 loss in a section 381(a) transaction), all suspended section 987 loss that has the same testing period is aggregated in a single group and this paragraph (e) is applied separately to each suspended section 987 loss group, in chronological order based on the earliest date included in the testing period of the group.

(3) *Consolidated group members.* All members of a consolidated group are treated as a single owner for purposes of applying this paragraph (e).

(f) *Recognition groupings.* The term *recognition grouping* means the section 987 gain or loss (including section 987 gain or loss that is recognized, deferred section 987 gain or loss, or suspended section 987 loss) that is initially assigned to the statutory and residual groupings described in paragraph (f)(1) of this section and to the statutory and residual groupings described in paragraph (f)(2) of this section, if applicable, under § 1.987–6(b)(2)(i).

(1) *Sourcing and section 904 category.* Section 987 gain or loss that is initially assigned to the following subcategories:

(i) U.S. source income; and

(ii) Foreign source income in a single section 904 category.

(2) *Statutory and residual groupings for CFC owners.* Solely with respect to owners that are controlled foreign corporations, section 987 gain or loss that is initially assigned to the following statutory and residual groupings:

(i) Tentative tested income;

(ii) Foreign currency gain or loss taken into account under section 954(c)(1)(D) pursuant to § 1.987–6(b)(2)(i)(C);

(iii) Income described in section 952(b) (ECI that is excluded from subpart F income); and

(iv) Income not described in paragraphs (f)(2)(i) through (iii) of this section.

(g) *Examples.* The following examples illustrate the application of this section.

(1) *Example 1: Suspension of section 987 loss and recognition of suspended section 987 loss*—(i) *Facts.* CFC is a controlled foreign corporation that has the U.S. dollar as its functional currency. CFC owns three section 987 QBUs, QBU1, QBU2, and QBU3. QBU1 has the euro as its functional currency, QBU2 has the pound as its functional currency, and QBU3 has the yen as its functional currency. CFC is subject to a current rate election but not an annual recognition election. An election has not been made under § 1.951A–2(c)(7) with respect to CFC. In year 1, CFC did not have cumulative suspended section 987 loss with respect to any of its QBUs and did not have outstanding deferred section 987 gain or loss. In year 2, CFC has net unrecognized section 987 loss of $200 with respect to QBU1, net unrecognized section 987 loss of $1,000 with respect to QBU2, and net unrecognized section 987 gain of $1,000 with respect to QBU3. In year 2, each QBU makes a remittance, and CFC's remittance proportion (determined under § 1.987–5(b)(1)) is 25% with respect to QBU1, 15% with respect to QBU2, and 10% with respect to QBU3. For purposes of § 1.987–6(b)(2)(i), all of QBU1's assets generate foreign source passive category income that corresponds to one or more subpart F income groups described in § 1.960–1(d)(2)(ii)(B)(*2*)(*i*) through (*v*) and all of QBU2's and QBU3's assets generate foreign source general category tested income.

(ii) *Analysis*—(A) *Application of §§ 1.987–5 and 1.987–6 and paragraph (c) of this section.* In year 2, CFC recognizes $100 of section 987 gain with respect to QBU3 (10% of $1,000) under § 1.987–5(a). Under § 1.987–6(b)(2)(i)(A), (B), and (D), the section 987 gain is initially characterized as foreign source general category tentative tested income. If a current rate election was not in effect, CFC would recognize $50 of section 987 loss with respect to QBU1 (25% of $200) and $150 of section 987 loss with respect to QBU2 (15% of $1,000). However, under paragraph (c) of this section, these amounts instead become suspended section 987 loss. Under § 1.987–6(b)(2)(i)(A) and (B), the $50 of suspended section 987 loss with respect to QBU1 is initially characterized as foreign source passive category income assigned to a subpart F income group described in § 1.960–1(d)(2)(ii)(B)(*2*)(*i*) through (*v*), and under § 1.987–6(b)(2)(i)(C) is treated as foreign currency loss taken into account under section 954(c)(1)(D). Under § 1.987–6(b)(2)(i)(A), (B), and (D), the $150 of suspended section 987 loss with respect to QBU2 is initially characterized as foreign source general category tentative tested income.

(B) *Cumulative suspended section 987 loss.* Under paragraph (b) of this section, in year 2, CFC's cumulative suspended section 987 loss in the recognition grouping of foreign source passive category foreign currency gain or loss taken into account under section 954(c)(1)(D) with respect to QBU1 is $50, the amount that became suspended section 987 loss in the recognition grouping in year 2. In addition, CFC's total cumulative suspended section 987 loss in that recognition grouping is $50. Similarly, CFC's cumulative suspended section 987 loss in the recognition grouping of foreign source general category tentative tested income with respect to QBU2 is $150, the amount that became suspended section 987 loss in the recognition grouping in year 2. In addition, CFC's total cumulative suspended section 987 loss in that recognition grouping is $150.

(C) *Recognition of suspended section 987 loss.* Under paragraph (e)(1) of this section, in year 2, CFC recognizes a portion of its total cumulative suspended section 987 loss in a single recognition grouping to the extent that it recognizes section 987 gain in the same recognition grouping with respect to any section 987 QBU. In year 2, CFC has $50 of total cumulative suspended section 987 loss in the recognition grouping of foreign source passive category foreign currency gain or loss taken into account under section 954(c)(1)(D) and $150 of total cumulative suspended section 987 loss in the recognition grouping of foreign source general category tentative tested income. CFC recognized $100 of section 987 gain in year 2 with respect to QBU3 in the recognition grouping of foreign source general category tentative tested income. Therefore, CFC also recognizes $100 of its total cumulative suspended section 987 loss in the same recognition grouping. The cumulative suspended section 987 loss that is recognized by CFC is attributable to QBU2, because QBU2 is CFC's only QBU with cumulative suspended section 987 loss in the recognition grouping of foreign source general category tentative tested income. Because no election under § 1.951A–2(c)(7) applies in year 2, both the $100 of recognized section 987 gain and the $100 of recognized section 987 loss are allocated to foreign source general category tested income. *See* § 1.987–6(b)(2)(ii). The amounts of suspended section 987 loss not recognized (that is, $50 of suspended section 987 loss characterized as foreign source passive category foreign currency gain or loss taken into account under section 954(c)(1)(D) with respect to QBU1 and $50 of suspended section 987 loss characterized as foreign source general category tentative tested income with respect to QBU2) remain suspended. Paragraph (e)(2) of this section does not apply because an annual recognition election is not in effect. The result would be the same if CFC had recognized section 987 gain in year 1, because section 987 gain from prior years is not taken into account under paragraph (e)(1) of this section.

(2) *Example 2: Suspension of section 987 loss when a current rate election is revoked*—(i) *Facts.* U.S. Corp is a domestic corporation that owns all of the interests in DE1. DE1 owns Business A, which is a section 987 QBU of U.S. Corp. In year 1, U.S. Corp made a current rate election but not an annual recognition election. In year 9, U.S. Corp has net unrecognized section 987 loss of $2 million with respect to Business A, which is not recognized or suspended in year 9. U.S. Corp revokes its current rate election effective for year 10. In year 10, before the application of this section, U.S. Corp has net accumulated unrecognized section 987 loss of $2 million.

(ii) *Analysis.* Under paragraph (d)(2) of this section, U.S. Corp's net accumulated unrecognized section 987 loss of $2 million with respect to Business A is converted into suspended section 987 loss at the beginning of year 10, the first taxable year in which the current rate election ceases to be in effect.

■ 20. Section 1.987–12 is revised to read as follows:

§ 1.987–12 Deferral of section 987 gain or loss.

(a) *Overview*—(1) *Scope.* This section provides rules that defer the recognition of section 987 gain or loss and rules for recognizing (or suspending) deferred section 987 gain or loss. This paragraph (a) provides an overview of this section and certain instances when this section does not apply. Paragraph (b) of this section describes the extent to which net unrecognized section 987 gain or loss is recognized under § 1.987–5 (or in certain cases, suspended) or becomes deferred section 987 gain or loss in connection with a deferral event. Paragraph (c) of this section describes the extent to which deferred section 987 gain or loss is recognized (or in certain cases, suspended) upon the occurrence of subsequent events. Paragraph (d) of this section provides a rule relating to the treatment of a successor deferral QBU when deferred section 987 loss becomes suspended section 987 loss. Paragraph (e) of this section provides an anti-abuse rule. Paragraph (f) of this section provides rules for determining the deferred section 987 gain or loss of combined and separated QBUs. Paragraph (g) of this section provides definitions. Paragraph (h) of this section provides examples illustrating the rules described in this section.

(2) *Exceptions*—(i) *Annual recognition election.* This section does not apply to a termination of a section 987 QBU in a taxable year in which an annual recognition election is in effect.

(ii) *De minimis rule.* This section does not apply in a taxable year if the aggregate amount of net unrecognized section 987 gain or loss of the owner with respect to all of its section 987 QBUs that would become deferred section 987 gain or loss under this section does not exceed $5 million.

(b) *Treatment of section 987 gain and loss in connection with a deferral event.* Notwithstanding § 1.987–5 (general rule requiring recognition of section 987 gain or loss in the taxable year of a remittance), the owner of a section 987 QBU with respect to which a deferral event occurs (an *original deferral QBU*) includes in taxable income section 987 gain or loss in connection with the deferral event only to the extent provided in this paragraph (b).

(1) *Gain or loss recognized (or suspended) in the taxable year of a deferral event.* In the taxable year of a deferral event with respect to an original deferral QBU, the owner of the original deferral QBU recognizes section 987 gain or loss under § 1.987–5, except that, solely for purposes of applying § 1.987–5, all assets and liabilities of the original deferral QBU that, immediately after the deferral event, are reflected on the books and records of a successor deferral QBU are treated as not having been transferred and therefore as remaining on the books and records of the original deferral QBU notwithstanding the deferral event. Notwithstanding the prior sentence, any

section 987 loss that would otherwise be recognized under this paragraph (b)(1) and § 1.987–5 may instead become suspended loss under § 1.987–11(c) if a current rate election is in effect, or under § 1.987–13(h) if the deferral event also constitutes an outbound loss event.

(2) *Deferred section 987 gain or loss attributable to a successor deferral QBU.* In the taxable year of a deferral event with respect to an original deferral QBU, any net unrecognized section 987 gain or loss that is not recognized (under § 1.987–5 including pursuant to paragraph (b)(1) of this section) or suspended (under § 1.987–11(c) or (d) or 1.987–13(h)) in the taxable year of the deferral event becomes deferred section 987 gain or loss of the original deferral QBU owner. A portion of the deferred section 987 gain or loss becomes deferred section 987 gain or loss with respect to each successor deferral QBU. Such portion is equal to the deferred section 987 gain or loss multiplied by a fraction, the numerator of which is the aggregate adjusted basis of the gross assets transferred to the successor deferral QBU in connection with the deferral event and the denominator of which is the aggregate adjusted basis of the gross assets transferred to all successor deferral QBUs in connection with the deferral event.

(c) *Recognition (or suspension) of deferred section 987 gain or loss following a deferral event.* An original deferral QBU owner recognizes deferred section 987 gain or loss with respect to a successor deferral QBU in the taxable year of the deferral event and in subsequent taxable years as provided in this paragraph (c).

(1) *Recognition upon a subsequent remittance*—(i) *In general.* Except as provided in paragraph (c)(2) of this section, an original deferral QBU owner recognizes deferred section 987 gain or loss in the taxable year of the deferral event, and in subsequent taxable years, upon a remittance from a successor deferral QBU to the owner of the successor deferral QBU (*successor deferral QBU owner*) in the amount described in paragraph (c)(1)(ii) of this section. Notwithstanding the prior sentence, any deferred section 987 loss that would otherwise be recognized under this paragraph (c)(1) may instead become suspended section 987 loss under § 1.987–11(c) if a current rate election is in effect with respect to the original deferral QBU owner.

(ii) *Amount.* The amount of deferred section 987 gain or loss that is recognized (or suspended) pursuant to this paragraph (c)(1) in a taxable year of the original deferral QBU owner is the original deferral QBU owner's outstanding deferred section 987 gain or loss (that is, the amount of deferred section 987 gain or loss not previously recognized or suspended) with respect to the successor deferral QBU multiplied by the remittance proportion of the successor deferral QBU owner with respect to the successor deferral QBU for the taxable year ending with or within the taxable year of the original deferral QBU owner, as determined under § 1.987–5(b) without regard to any annual recognition election of the successor deferral QBU owner. See paragraph (h)(4) of this section (*Example 4*) for an illustration of this rule.

(iii) *Deemed remittance by a successor deferral QBU.* For purposes of this paragraph (c)(1), in a taxable year of the original deferral QBU owner in which a successor deferral QBU ceases to be owned by a member of the controlled group that includes the original deferral QBU owner, the successor deferral QBU is treated as having a remittance proportion of one. Accordingly, if a successor deferral QBU ceases to be owned by a member of the controlled group that includes the original deferral QBU owner, the original deferral QBU owner's outstanding deferred section 987 gain or loss with respect to that successor deferral QBU will be recognized (or suspended). For purposes of this paragraph (c)(1), if the original deferral QBU owner goes out of existence and there is no qualified successor, in the last taxable year of the original deferral QBU owner, each successor deferral QBU is treated as having a remittance proportion of one. This paragraph (c)(1)(iii) does not affect the application of the section 987 regulations to the successor deferral QBU owner with respect to its ownership of the successor deferral QBU.

(2) *Deferral events and outbound loss events with respect to a successor deferral QBU.* Notwithstanding paragraph (c)(1) of this section, if assets of the successor deferral QBU (*transferred assets*) are transferred (or deemed transferred) in a transaction (the *deemed transaction*) that would constitute a deferral event or an outbound loss event if the original deferral QBU owner owned the successor deferral QBU directly and the original deferral QBU owner had net unrecognized section 987 gain or loss with respect to the successor deferral QBU equal to its outstanding deferred section 987 gain or loss with respect to the successor deferral QBU, then, in accordance with § 1.987–13(h)—

(i) The original deferral QBU owner recognizes outstanding deferred section 987 gain or loss, or suspends outstanding deferred section 987 loss, to the extent it would have recognized or suspended net unrecognized section 987 gain or loss under the deemed transaction;

(ii) Each section 987 QBU is a successor deferral QBU to the extent it would have been under the deemed transaction and the original deferral QBU owner has deferred section 987 gain or loss with respect to the successor deferral QBU to the extent it would have under the deemed transaction;

(iii) Each eligible QBU is a successor suspended loss QBU to the extent it would have been under the deemed transaction and the original deferral QBU owner has suspended section 987 loss with respect to the suspended loss QBU to the extent it would have under the deemed transaction.

(d) *Successor deferral QBU becomes a successor suspended loss QBU.* A successor deferral QBU becomes a successor suspended loss QBU, and an original deferral QBU owner becomes an original suspended loss QBU owner, if any of the original deferral QBU owner's deferred section 987 loss with respect to the successor deferral QBU becomes suspended section 987 loss. An eligible QBU may be both a successor deferral QBU and a successor suspended loss QBU and the original deferral QBU owner may also be an original suspended loss QBU owner.

(e) *Anti-abuse.* No section 987 loss is recognized under this section, § 1.987–5, or § 1.987–13 in connection with a transaction or series of transactions that are undertaken with a principal purpose of avoiding the purposes of this section.

(f) *Combinations and separations of successor deferral QBUs.* A combined QBU is a successor deferral QBU if either combining QBU was a successor deferral QBU. A separated QBU is a successor deferral QBU if the separating QBU was a successor deferral QBU.

(1) *Combined QBU.* The deferred section 987 gain or loss of a combined QBU in each recognition grouping for a taxable year is equal to the sum of the combining QBUs' deferred section 987 gain or loss in that recognition grouping.

(2) *Separated QBU.* The deferred section 987 gain or loss of a separated QBU in each recognition grouping for a taxable year is equal to the sum of the separating QBU's deferred section 987 gain or loss in each recognition grouping multiplied by the separation fraction.

(g) *Definitions.* The following definitions apply for purposes of this section.

(1) *Deferral event.* A deferral event with respect to a section 987 QBU means any transaction or series of transactions that satisfy the conditions described in both paragraphs (g)(1)(i) and (ii) of this section.

(i) *Events.* The transaction or series of transactions constitutes either:

(A) A termination of the section 987 QBU under § 1.987–8(b)(2) (substantially all the assets transferred to the owner), § 1.987–8(b)(5) (section 987 QBU ceases to be a section 987 QBU), or § 1.987–8(b)(6) (ownership of section 987 QBU changes between direct and indirect ownership); or

(B) A disposition of part of an interest in a section 987 aggregate partnership or DE through which the section 987 QBU is owned, a disposition of part of a directly held section 987 QBU, or any contribution by another person to a section 987 aggregate partnership, DE, or section 987 QBU of assets that, immediately after the contribution, are not considered to be included on the books and records of an eligible QBU, provided that the contribution gives rise to a deemed transfer from the section 987 QBU to the owner.

(ii) *Assets on books of successor deferral QBU.* Immediately after the transaction or series of transactions, assets of the section 987 QBU are reflected on the books and records of a successor deferral QBU.

(2) *Successor deferral QBU.* A section 987 QBU (*potential successor deferral QBU*) is a successor deferral QBU with respect to a section 987 QBU referred to in paragraph (g)(1)(i) of this section if, immediately after the transaction or series of transactions described in that paragraph, the potential successor deferral QBU satisfies all of the conditions described in paragraphs (g)(2)(i) through (iii) of this section.

(i) The books and records of the potential successor deferral QBU reflect assets that, immediately before the transaction or series of transactions described in paragraph (g)(1)(i) of this section, were reflected on the books and records of the section 987 QBU referred to in that paragraph.

(ii) The owner of the potential successor deferral QBU and the owner of the section 987 QBU referred to in paragraph (g)(1)(i) of this section immediately before the transaction or series of transactions described in that paragraph are members of the same controlled group.

(iii) If the owner of the section 987 QBU referred to in paragraph (g)(1)(i) of this section immediately before the transaction or series of transactions described in that paragraph was a U.S. person, the potential successor deferral QBU is owned by a U.S. person.

(3) *Original deferral QBU owner.* An original deferral QBU owner means, with respect to an original deferral QBU, the owner of the original deferral QBU immediately before the deferral event, or the owner's qualified successor.

(4) *Qualified successor.* A qualified successor with respect to a corporation (*transferor corporation*) means another corporation that acquires the assets of the transferor corporation in a transaction described in section 381(a) (*acquiring corporation*), provided that the acquiring corporation is a domestic corporation and the transferor corporation was a domestic corporation, or the acquiring corporation is a controlled foreign corporation and the transferor corporation was a controlled foreign corporation. A qualified successor with respect to a partnership (*transferor partnership*) means another partnership (*acquiring partnership*) that acquires the assets of the transferor partnership in a merger or consolidation described in section 708(b)(2)(A). A qualified successor with respect to an individual decedent means the estate of the decedent. A qualified successor of a person includes the qualified successor of a qualified successor.

(h) *Examples.* The following examples illustrate the application of this section. For purposes of the examples, DC1 is a domestic corporation that owns all of the stock of DC2, which is also a domestic corporation, and CFC1, a controlled foreign corporation. In addition, DC1, DC2, and CFC1 are members of a controlled group, and the de minimis rule of paragraph (a)(2)(ii) of this section is not applicable. Finally, except as otherwise provided, Business A is a section 987 QBU with the euro as its functional currency, there are no transfers between Business A and its owner, and Business A's assets are not depreciable or amortizable.

(1) *Example 1: Contribution of a section 987 QBU with net unrecognized section 987 gain to a member of the controlled group*—(i) *Facts.* DC1 owns Business A. The adjusted balance sheet of Business A reflects assets with an aggregate adjusted basis of €1,000x and no liabilities. DC1 contributes €900x of Business A's assets to DC2 in exchange for DC2 stock in a transaction to which section 351 applies. Immediately after the contribution, the remaining €100x of Business A's assets are no longer reflected on the books and records of a section 987 QBU (but are instead reflected on the books and records of DC1's home office). DC2, which has the U.S. dollar as its functional currency, uses the Business A assets in a business (*Business B*) that constitutes a section 987 QBU. At the time of the contribution, Business A has net unrecognized section 987 gain of $100x.

(ii) *Analysis*—(A) Under § 1.987–2(c)(2)(ii), DC1's contribution of €900x of Business A's assets to DC2 is treated as a transfer of all of the assets of Business A to DC1, immediately followed by DC1's contribution of €900x of Business A's assets to DC2. The contribution of Business A's assets is a deferral event within the meaning of paragraph (g)(1) of this section because:

(*1*) The transfer from Business A to DC1 is a transfer of substantially all of Business A's assets to DC1, resulting in a termination of the Business A QBU under § 1.987–8(b)(2); and

(*2*) Immediately after the transaction, assets of Business A are reflected on the books and records of Business B, a section 987 QBU owned by a member of DC1's controlled group and a successor deferral QBU within the meaning of paragraph (g)(2) of this section. Accordingly, Business A is an original deferral QBU within the meaning of paragraph (b) of this section, and DC1 is an original deferral QBU owner of Business A within the meaning of paragraph (g)(3) of this section.

(B) Under paragraph (b)(1) of this section, DC1's taxable income in the taxable year of the deferral event includes DC1's section 987 gain or loss determined with respect to Business A under § 1.987–5, except that, for purposes of applying § 1.987–5, all assets of Business A that are reflected on the books and records of Business B immediately after Business A's termination are treated as not having been transferred and therefore as though they remained on Business A's books and records (notwithstanding the deemed transfer of those assets under § 1.987–8(e)). Accordingly, in the taxable year of the deferral event, Business A is treated as making a remittance of €100x, corresponding to the assets of Business A that are no longer reflected on the books and records of a section 987 QBU, and is treated as having a remittance proportion with respect to Business A of 0.1, determined by dividing the €100x remittance by the sum of the remittance and the €900x aggregate adjusted basis of the gross assets deemed to remain on Business A's books and records at the end of the taxable year. Thus, DC1 recognizes $10x of section 987 gain in the taxable year of the deferral event. DC1's deferred section 987 gain equals $90x, which is the amount of section 987 gain that, but for the application of paragraph (b) of this section, DC1 would have recognized under § 1.987–5 (which is $100x), less the amount of section 987 gain recognized by DC1 under § 1.987–5 and this section (which is $10x).

(2) *Example 2: Contribution of a section 987 QBU to a member of the controlled group when a current rate election is in effect*—(i) *Facts.* DC1 owns Business A, which is engaged in the business of manufacturing Product X. In a taxable year in which a current rate election is in effect (and an annual recognition election is not in effect), the adjusted balance sheet of Business A reflects assets with an aggregate adjusted basis of €1,000x and no liabilities. DC1 contributes €900x of Business A's assets to DC2 in exchange for DC2 stock in a transaction to which section 351 applies. Immediately after the contribution, the remaining €100x of Business A's assets are no longer reflected on the books and records of an eligible QBU that is engaged in the business of manufacturing Product X (but are instead reflected on the books and records of DC1's home office). DC2, which has the U.S. dollar as its functional currency, uses the Business A assets in a Product X manufacturing business (*Business B*) that constitutes a section 987 QBU. At the time of the contribution, Business A has net unrecognized section 987 loss of $100x.

(ii) *Analysis*—(A) For the reasons described in paragraph (h)(1) of this section (*Example 1*), the contribution results in a termination of the Business A QBU and a deferral event with respect to the Business A QBU, an original deferral QBU; DC1 is an original deferral QBU owner within the meaning of paragraph (g)(3) of this section; Business B is a successor deferral QBU with respect to Business A; and DC2 is a successor deferral QBU owner.

(B) Under paragraph (b)(1) of this section, for purposes of applying § 1.987–5, all the assets of Business A that are reflected on the books and records of Business B immediately after Business A's termination are treated as not having been transferred and therefore as though they remained on Business A's books and records (notwithstanding the deemed transfer of those assets under § 1.987–8(e)). Accordingly, in the taxable year of the deferral event, Business A is treated as making a remittance of €100x, corresponding to the assets of Business A that are no longer reflected on the books and records of a section 987 QBU, and DC1 is treated as having a remittance proportion with respect to Business A of 0.1, determined by dividing the €100x remittance by the sum of the remittance and the €900x aggregate adjusted basis of the gross assets deemed to remain on Business A's books and records at the end of the taxable year. Thus, but for the application of § 1.987–11(c), DC1 would recognize $10x of section 987 loss in the taxable year of the deferral event. Under § 1.987–11(c), because a current rate election is in effect (and an annual recognition election is not in effect), the loss is instead treated as suspended section 987 loss. DC1's deferred section 987 loss equals $90x, which is the amount of section 987 loss that, but for the application of paragraph (b) of this section, would have been suspended under § 1.987–11(c) (which is $100x), less the amount of section 987 loss suspended under § 1.987–11(c) (which is $10x).

(C) Under § 1.987–13(b)(1)(i), Business B is a successor suspended loss QBU because, immediately after the termination of the Business A section 987 QBU, a significant portion of the assets of Business A was reflected on the books and records of Business B (an eligible QBU), Business B continued to carry on the trade or business of Business A, and Business B was owned by DC2, a member of the same controlled group as DC1 (which is the original suspended loss QBU owner under § 1.987–13(l)(1)). Therefore, under § 1.987–13(b)(1)(ii), all of Business A's suspended section 987 loss (including the suspended section 987 loss resulting from the termination of Business A) becomes suspended section 987 loss with respect to Business B.

(3) *Example 3: Election to be classified as a corporation*—(i) *Facts.* DC1 owns all of the interests in Entity A, a DE. Entity A conducts Business A, which has net unrecognized section 987 gain of $500x. Entity A elects to be classified as a corporation under § 301.7701–3(c). As a result of the election and pursuant to § 301.7701–3(g)(1)(iv), DC1 is treated as contributing all of the assets and liabilities of Business A to newly-formed CFC1, which has the euro as its functional currency. Immediately after the contribution, the assets and liabilities of Business A are reflected on CFC1's books and records.

(ii) *Analysis.* Under § 1.987–2(c)(2)(ii), DC1's deemed contribution of all of the assets and liabilities of Business A to CFC1 is treated as a transfer of all of the assets and liabilities of Business A to DC1, followed immediately by DC1's contribution of those assets and liabilities to CFC1. Because the deemed transfer from Business A to DC1 is a transfer of substantially all of Business A's assets to DC1, the Business A QBU terminates under § 1.987–8(b)(2). The contribution of Business A's assets is not a deferral event within the meaning of paragraph (b) of this section because, immediately after the transaction, no assets of Business A are reflected on the books and records of a successor deferral QBU within the meaning of paragraph (g)(2) of this section due to the fact that the assets of Business A are not reflected on the books and records of a section 987 QBU immediately after the termination. In addition, the requirement of paragraph (g)(2)(iii) of this section is not met because Business A was owned by a U.S. person and the potential successor deferral QBU, which is owned by CFC1, is not owned by a U.S. person. Accordingly, DC1 recognizes section 987 gain of $500x with respect to Business A under § 1.987–5 without regard to this section. Because the requirement of paragraph (g)(2)(iii) of this section is not met, the result would be the same even if the assets of Business A were transferred in a section 351 exchange to an existing foreign corporation that had a different functional currency than Business A.

(4) *Example 4: Partial recognition of deferred gain or loss*—(i) *Facts.* DC1 owns all of the interests in Entity A, a DE that conducts Business A in Country X. During year 1, DC1 contributes all of its interests in Entity A to DC2 in an exchange to which section 351 applies. At the time of the contribution, Business A has net unrecognized section 987 gain of $100x. After the contribution, Entity A continues to conduct business in Country X (*Business B*). In year 3, as a result of a net transfer of property from Business B to DC2, DC2's remittance proportion with respect to Business B, as determined under § 1.987–5, is 0.25.

(ii) *Analysis*—(A) For the reasons described in paragraph (h)(1) of this section *(Example 1*), the contribution of all the interests in Entity A by DC1 to DC2 results in a termination of the Business A QBU and a deferral event with respect to the Business A QBU, an original deferral QBU; DC1 is an original deferral QBU owner within the meaning of paragraph (g)(3) of this section; Business B is a successor deferral QBU with respect to Business A; DC2 is a successor deferral QBU owner; and the $100x of net unrecognized section 987 gain with respect to Business A becomes deferred section 987 gain as a result of the deferral event.

(B) Under paragraph (c)(1)(i) of this section, DC1 recognizes deferred section 987 gain in year 3 as a result of the remittance from Business B to DC2. Under paragraph (c)(1)(ii) of this section, the amount of deferred section 987 gain that DC1 recognizes is $25x, which is DC1's outstanding deferred section 987 gain of $100x with respect to Business A multiplied by the remittance proportion of 0.25 of DC2 with respect to Business B for the taxable year as determined under § 1.987–5(b).

■ 21. Section 1.987–13 is added to read as follows:

§ 1.987–13 Suspended section 987 loss upon terminations.

(a) *Overview*—(1) *In general.* This section provides rules relating to suspended section 987 loss of an owner with respect to a section 987 QBU or successor suspended loss QBU that terminates. Paragraph (b) of this section provides rules treating suspended section 987 loss as recognized or attributable to a successor when a section 987 QBU terminates. Paragraph (c) of this section provides rules treating suspended section 987 loss as recognized or attributable to a subsequent successor when a successor suspended loss QBU terminates. Paragraph (d) of this section provides rules regarding the recognition of suspended section 987 loss when interests in a successor suspended loss QBU owner are transferred. Paragraph (e) of this section provides rules that apply when interests in an original suspended loss QBU owner are transferred. Paragraph (f) of this section provides rules that apply when an original suspended loss QBU owner ceases to exist. Paragraph (g) of this section provides rules preventing the carryover of suspended section 987 loss in connection with certain inbound transactions. Paragraph (h) of this section provides rules that suspend section 987 loss in connection with certain outbound transactions. Paragraph (i) of this section is reserved. Paragraph (j) of this section provides rules relating to the termination of a successor suspended loss QBU. Paragraph (k) of this section provides an anti-abuse rule. Paragraph (l) of this section provides definitions that apply for purposes of this section. Paragraph (m) of this section provides examples illustrating the rules of this section.

(2) *Ordering rule.* Paragraphs (b) through (d) of this section are applied after the application of § 1.987–11(e) (loss-to-the-extent-of-gain rule).

(b) *Termination of a section 987 QBU with suspended loss.* If a section 987 QBU terminates, and at the time of termination, the owner has suspended section 987 loss with respect to the section 987 QBU (including because the termination was an outbound loss event or because net unrecognized section 987 loss became suspended section 987 loss upon termination as a result of a current rate election), then either paragraph (b)(1) or (2) of this section applies.

(1) *Suspended section 987 loss becomes suspended section 987 loss with respect to a successor suspended loss QBU*—(i) *Successor suspended loss QBU.* If, immediately after the termination, a significant portion of the assets of the terminating section 987 QBU are reflected on the books and records of an eligible QBU that carries on a trade or business of the section 987 QBU and is owned by the owner of the section 987 QBU or a member of its controlled group, then the eligible QBU is a successor suspended loss QBU and the rules described in paragraph (b)(1)(ii) of this section apply.

(ii) *Attribution of suspended section 987 loss to successor suspended loss QBU.* A portion of the cumulative suspended section 987 loss with respect to the terminating section 987 QBU that is not recognized in the taxable year of the termination under § 1.987–11(e) becomes suspended section 987 loss with respect to each successor suspended loss QBU. Such portion is equal to the suspended section 987 loss described in the preceding sentence, multiplied by a fraction, the numerator of which is the aggregate adjusted basis of the gross assets transferred to the successor suspended loss QBU in connection with the termination, and the denominator of which is the aggregate adjusted basis of the gross assets transferred to all successor suspended loss QBUs in connection with the termination.

(2) *Recognition of suspended loss.* If, immediately after the termination of the section 987 QBU, there is no successor suspended loss QBU under paragraph (b)(1) of this section, then the owner recognizes the cumulative suspended section 987 loss with respect to the section 987 QBU that is not recognized in the taxable year of the termination under § 1.987–11(e).

(c) *Termination of a successor suspended loss QBU.* If a successor suspended loss QBU terminates (as described in paragraph (j) of this section), then either paragraph (c)(1) or (2) of this section applies.

(1) *Successor to the successor suspended loss QBU*—(i) *Successor suspended loss QBU.* If, immediately after the termination, a significant portion of the assets of the terminating successor suspended loss QBU (*initial successor*) are reflected on the books and records of an eligible QBU (*subsequent successor*) that carries on a trade or business of the initial successor and is owned by the original suspended loss QBU owner or a member of its controlled group, then the subsequent successor is a successor suspended loss QBU and the rules described in paragraph (c)(1)(ii) of this section apply.

(ii) *Attribution of suspended section 987 loss to successor suspended loss QBU.* A portion of the cumulative suspended section 987 loss with respect to the initial successor that is not recognized in the taxable year of the termination under § 1.987–11(e) becomes suspended section 987 loss with respect to each subsequent successor. Such portion is equal to the suspended section 987 loss described in the preceding sentence, multiplied by a fraction, the numerator of which is the aggregate adjusted basis of the gross assets transferred to the subsequent successor in connection with the termination, and the denominator of which is the aggregate adjusted basis of the gross assets transferred to all subsequent successors in connection with the termination.

(2) *Recognition of suspended loss.* If, immediately after the termination of the initial successor, there is no subsequent successor that is a successor suspended loss QBU under paragraph (c)(1) of this section, then the original suspended loss QBU owner recognizes the cumulative suspended section 987 loss with respect to the initial successor that is not recognized in the taxable year of the termination under § 1.987–11(e).

(d) *Transfer of successor suspended loss QBU owner.* If a successor suspended loss QBU ceases to be owned by a member of the original suspended loss QBU owner's controlled group as a result of a direct or indirect transfer, or an issuance or redemption, of an ownership interest in the successor suspended loss QBU owner, then the original suspended loss QBU owner recognizes the cumulative suspended section 987 loss with respect to the successor suspended loss QBU that is not recognized in the taxable year under § 1.987–11(e).

(e) *Transfer of original suspended loss QBU owner.* If an original suspended loss QBU owner ceases to be a member of the successor suspended loss QBU owner's controlled group as a result of a direct or indirect transfer, or an issuance or redemption, of an ownership interest in the original suspended loss QBU owner, the original suspended loss QBU owner's suspended section 987 loss ceases to be suspended section 987 loss with respect to any section 987 QBU or successor suspended loss QBU. As a result, the suspended section 987 loss can be recognized under § 1.987–11(e) but cannot be recognized under paragraph (b)(2), (c)(2), or (d) of this section.

(f) *Original suspended loss QBU owner ceases to exist.* If an original suspended loss QBU owner ceases to exist and there is no successor under paragraph (l)(1)(ii) of this section (for example, as a result of a section 331 liquidation), then any suspended section 987 loss that is not recognized after application of the loss-to-the-extent-of-gain rule in § 1.987–11(e) cannot be recognized and is eliminated.

(g) *Inbound nonrecognition transactions—no carryover of suspended section 987 loss.* If an owner of a section 987 QBU with suspended section 987 loss, or an original suspended loss QBU owner, ceases to exist in a transaction described in § 1.987–8(c)(1)(ii) (inbound section 332 liquidation) or (c)(2)(ii) (inbound reorganization), then any suspended section 987 loss of the owner or original suspended loss QBU owner that is not recognized after application of the loss-to-the-extent-of-gain rule in § 1.987–11(e) is eliminated. As a result, the distributee or acquiring corporation does not succeed to or take into account any suspended section 987 loss of the owner or original suspended loss QBU owner under section 381.

(h) *Outbound transactions—recognition or suspension of net unrecognized section 987 loss.* This paragraph (h) applies to taxable years in which neither a current rate election nor an annual recognition election is in effect.

(1) *In general.* Notwithstanding § 1.987–5, if an outbound loss event occurs with respect to a section 987 QBU (an *outbound loss QBU*), the original owner of the section 987 QBU includes in taxable income in the taxable year of the outbound loss event section 987 loss with respect to the outbound loss QBU only to the extent provided in paragraph (h)(3) of this section.

(2) *Outbound loss event.* An outbound loss event means, with respect to a section 987 QBU:

(i) Any termination of the section 987 QBU as a result of a transfer by a U.S. person of assets of the section 987 QBU to a foreign person that is a member of the same controlled group as the U.S. person immediately before the transaction or, if the transferee did not exist immediately before the transaction, immediately after the transaction (*related foreign person*), provided that the termination would result in the recognition of section 987 loss with respect to the section 987 QBU under § 1.987–5 but for this paragraph (h); or

(ii) Any transfer by a U.S. person of part of an interest in a section 987 aggregate partnership, or part of an interest in a DE, through which the U.S. person owns the section 987 QBU to a related foreign person that has the same functional currency as the section 987 QBU, or any contribution by such a related foreign person to such a partnership or DE of assets that, immediately after the contribution, are not considered to be included on the books and records of an eligible QBU, provided that the transfer would result in the recognition of section 987 loss with respect to the section 987 QBU under § 1.987–5 but for this paragraph (h).

(3) *Loss recognition upon an outbound loss event.* In the taxable year of an outbound loss event with respect to an outbound loss QBU, the owner of the outbound loss QBU recognizes section 987 loss as determined under §§ 1.987–5 and 1.987–12(b), except that, solely for purposes of applying § 1.987–5, assets and liabilities of the outbound loss QBU that, immediately after the outbound loss event, are reflected on the books and records of an eligible QBU owned by the related foreign person described in paragraph (h)(2) of this section are treated as not having been transferred and therefore as remaining on the books and records of the outbound loss QBU notwithstanding the outbound loss event.

(4) *Loss suspension upon outbound loss event.* Net unrecognized section 987 loss or deferred section 987 loss that, as a result of this paragraph (h), is not recognized in the taxable year of the outbound loss event (*outbound section 987 loss*) under § 1.987–5 becomes suspended section 987 loss.

(i) [Reserved]

(j) *Termination of a successor suspended loss QBU.* For purposes of applying paragraph (c) of this section, a successor suspended loss QBU terminates if it ceases to be an eligible QBU of its owner.

(k) *Anti-abuse.* No section 987 loss is recognized under this section, § 1.987–5, or § 1.987–12 in connection with a transaction or series of transactions that are undertaken with a principal purpose of avoiding the purposes of this section.

(l) *Definitions.* The following definitions apply for purposes of this section.

(1) *Original suspended loss QBU owner*—(i) *In general.* An *original suspended loss QBU owner* is the person that was the owner of a section 987 QBU before its termination in a transaction to which paragraph (b)(1) of this section applies.

(ii) *Successors.* If an original suspended loss QBU owner is a corporation (*transferor corporation*) and another corporation acquires the assets of the transferor corporation in a transaction described in section 381(a), then the acquiring corporation becomes the original suspended loss QBU owner.

(2) *Successor suspended loss QBU.* A *successor suspended loss QBU* is an eligible QBU (which may or may not be a section 987 QBU) with respect to which the original suspended loss QBU owner has suspended section 987 loss after the termination of its section 987 QBU. See paragraphs (b)(1) and (c)(1) of this section and § 1.987–12(d) for rules regarding when an eligible QBU is a successor suspended loss QBU.

(3) *Successor suspended loss QBU owner.* A *successor suspended loss QBU owner* is the owner of the assets and liabilities of a successor suspended loss QBU.

(4) *Ownership interests.* The term *ownership interests* means stock in a corporation, partnership interests in a partnership, and beneficiary interests in a non-grantor trust or an estate.

(5) *Significant portion.* With respect to the assets of an eligible QBU, the term *significant portion* means a significant portion of the operating assets, determined based on all the facts and circumstances, provided that more than 30 percent of the operating assets will constitute a significant portion in all cases and less than 10 percent of the operating assets will not constitute a significant portion in all cases.

(m) *Examples.* The following examples illustrate the application of this section. For purposes of the examples, DC1 is a domestic corporation that owns all of the interests in Entity A, a DE. Entity A conducts Business A, a section 987 QBU that is engaged in the business of selling Product X. Business A has the euro as its functional currency and has cumulative suspended section 987 loss under § 1.987–11(b) of $500x.

(1) *Example 1: Trade or business of a section 987 QBU ceases*—(i) *Facts.* Entity A's trade or business of selling Product X ceases, resulting in a termination of the Business A section 987 QBU under § 1.987–8(b)(1). After the trade or business is wound up, the remaining assets are transferred to DC1 and are not used in the trade or business of selling Product X immediately following the termination.

(ii) *Analysis.* Immediately after the termination of the Business A section 987 QBU, a significant portion of Business A's assets is not reflected on the books and records of an eligible QBU that carries on a trade or business of Business A and is owned by DC1 or a member of its controlled group. Therefore, Business A has no successor suspended loss QBU under paragraph (b)(1) of this section. Consequently, DC1 recognizes the cumulative suspended section 987 loss with respect to the Business A section 987 QBU under paragraph (b)(2) of this section.

(2) *Example 2: Trade or business of a section 987 QBU is sold to a third party*—(i) *Facts.* DC1 sells all the interests in Entity A to a third party for cash.

(ii) *Analysis.* Under § 1.987–2(c)(2)(ii), the sale of the Business A assets and liabilities for cash that is reflected on the books of DC1 is treated as a transfer of all of the assets and liabilities of Business A to DC1, followed immediately by DC1's sale of those assets and liabilities. Because the deemed transfer from Business A to DC1 is a transfer of substantially all of Business A's assets to DC1, the Business A section 987 QBU terminates under § 1.987–8(b)(2). Immediately after the termination of the Business A section 987 QBU, a significant portion of Business A's assets is not reflected on the books and records of an eligible QBU that carries on a trade or business of Business A and is owned by DC1 or a member of its controlled group. Therefore, Business A has no successor suspended loss QBU under paragraph (b)(1) of this section. Consequently, DC1 recognizes the cumulative suspended section 987 loss with respect to the Business A section 987 QBU under paragraph (b)(2) of this section.

(3) *Example 3: Outbound loss event*—(i) *Facts.* Entity A elects to be classified as a corporation under § 301.7701–3(c) of this chapter. As a result of the election and pursuant to § 301.7701–3(g)(1)(iv) of this chapter, DC1 is treated as contributing all of the assets and liabilities of Business A to newly-formed CFC1, which has the euro as its functional currency. Immediately after the contribution, the assets and liabilities of Business A are reflected on CFC1's books and records. After being classified as a corporation, CFC1 owns Business A, and Business A conducts the same trade or business it conducted when it was owned by DC1. Neither a current rate election nor an annual recognition election is in effect.

(ii) *Analysis*—(A) Under § 1.987–2(c)(2)(ii), DC1's contribution of all of the assets and liabilities of Business A to CFC1 is treated as a transfer of all of the assets and liabilities of Business A to DC1, followed immediately by DC1's contribution of those assets and liabilities to CFC1. Because the deemed transfer from Business A to DC1 is a transfer of substantially all of Business A's assets to DC1, the Business A section 987 QBU terminates under § 1.987–8(b)(2). The contribution of Business A's assets to CFC1 is not a deferral event within the meaning of § 1.987–12(g)(1) because, immediately after the transaction, no assets of Business A are reflected on the books and records of a successor deferral QBU within the meaning of § 1.987–12(g)(2) due to the fact that the assets of Business A are not reflected on the books and records of a section 987 QBU immediately after the termination, as well as the fact that the requirement of § 1.987–12(g)(2)(iii) is not met because Business A was owned by a U.S. person and the potential successor deferral QBU, which is owned by CFC1, is not owned by a U.S. person. The termination of the Business A section 987 QBU as a result of the transfer of the assets of Business A by a U.S. person (DC1) to a foreign person (CFC1) that is a member of DC1's controlled group is an outbound loss event described in paragraph (h)(2) of this section.

(B) Under paragraphs (h)(1) and (3) of this section, in the taxable year of the outbound loss event, DC1 includes in taxable income section 987 loss recognized with respect to Business A as determined under § 1.987–5, except that, for purposes of applying § 1.987–5, all assets and liabilities of Business A that are reflected on the books and records of CFC1, a related foreign person described in paragraph (h)(2) of this section, are treated as not having been transferred. Accordingly, DC1's remittance proportion with respect to Business A is 0, and DC1 recognizes no section 987 loss with respect to Business A. DC1's outbound section 987 loss is $500x, which is the amount of section 987 loss that DC1 would have recognized under § 1.987–5 without regard to paragraph (h) of this section ($500x), less the amount of section 987 loss recognized by DC1 under paragraph (h)(3) of this section ($0). Under paragraph (h)(4) of this section, the $500x of outbound section 987 loss becomes suspended section 987 loss.

(C) Under paragraph (b)(1)(i) of this section, Business A (in the hands of CFC1) is a successor suspended loss QBU because, immediately after the termination of the Business A section 987 QBU, the Business A assets are reflected on the books and records of Business A (in the hands of CFC1), Business A was an eligible QBU that continued to carry on the same trade or business, and Business A was owned by CFC1, a member of the same controlled group as DC (which is the original suspended loss QBU owner under paragraph (l)(1) of this section). Therefore, under paragraph (b)(1)(ii) of this section, all of Business A's suspended section 987 loss (including the suspended section 987 loss resulting from the termination of Business A) is treated as suspended section 987 loss with respect to Business A (in the hands of CFC1).

■ 22. Section 1.987–14 is added to read as follows:

§ 1.987–14 Applicability date.

(a) *Section 987 regulations applicability date*—(1) *In general.* Except as provided in this section, the section 987 regulations apply to taxable years beginning after December 31, 2024.

(2) *Applicability date for a terminating QBU.* The section 987 regulations apply to the owner of a terminating QBU beginning on the day the section 987 QBU terminates, but only with respect to the section 987 QBU, any successor deferral QBUs or successor suspended loss QBUs (in their capacity as such), and any net unrecognized section 987 gain or loss, deferred section 987 gain or loss, or suspended section 987 loss with respect thereto. *See* § 1.987–1(h) for the definition of a terminating QBU.

(3) *Partnerships.* If the section 987 regulations apply to a taxable year of a partnership and would not otherwise apply to the taxable year of a partner in which or with which the partnership's taxable year ends, then the section 987 regulations apply to that taxable year of the partner solely with respect to the partner's interest in the partnership and its section 987 gain or loss attributable to an eligible QBU held by the partnership.

(b) *Application of the section 987 regulations to taxable years beginning on or before December 31, 2024, and ending after* November 9, 2023. A taxpayer (including a taxpayer that has applied the 2016 and 2019 section 987 regulations to a prior taxable year under paragraph (c) of this section) may choose to apply the section 987 regulations to a taxable year beginning on or before December 31, 2024, and ending after November 9, 2023, provided the taxpayer and each member of its consolidated group and section 987 electing group:

(1) Consistently apply the section 987 regulations in their entirety to the taxable year and all subsequent taxable years beginning on or before December 31, 2024; and

(2) Apply the section 987 regulations on their original timely filed (including extensions) returns in the first taxable year in which the section 987 regulations apply.

(c) *Application of the 2016 and 2019 section 987 regulations*—(1) *In general.* A taxpayer may choose to apply the 2016 and 2019 section 987 regulations to a taxable year beginning after December 7, 2016, and beginning on or before December 31, 2024, provided the taxpayer and each member of its consolidated group and section 987 electing group:

(i) First apply the 2016 and 2019 section 987 regulations to a taxable year ending before November 9, 2023;

(ii) Consistently apply the 2016 and 2019 section 987 regulations in their entirety to all section 987 QBUs (within the meaning of prior § 1.987–1(b)(2)) directly or indirectly owned (within the meaning of prior § 1.987–1(b)(4)) by the taxpayer and each member of its consolidated group and section 987 electing group on the transition date for that taxable year and all subsequent taxable years before the taxable year in which the taxpayer and each member of its consolidated group and section 987 electing group apply the section 987 regulations pursuant to paragraph (a) or (b) of this section; and

(iii) Either—

(A) First applied the 2016 and 2019 section 987 regulations on their returns filed before November 9, 2023; or

(B) First apply the 2016 and 2019 section 987 regulations on their returns filed on or after November 9, 2023 and apply § 1.987–10 in lieu of prior § 1.987–10.

(2) *Application to section 987 QBUs not owned on the transition date.* For any taxable year in which a taxpayer applies the 2016 and 2019 section 987 regulations pursuant to paragraph (c)(1) of this section, the taxpayer may choose to apply the 2016 and 2019 section 987 regulations to any section 987 QBU (within the meaning of prior § 1.987–1(b)(2)) that the taxpayer did not directly or indirectly own (within the meaning of prior § 1.987–1(b)(4)) on the transition date, provided the taxpayer applies the 2016 and 2019 section 987 regulations consistently to that QBU for that taxable year and all subsequent taxable years before the taxable year in which the taxpayer applies the section 987 regulations pursuant to paragraph (a) or (b)(1) of this section, provided that the taxpayer either—

(i) First applied the 2016 and 2019 section 987 regulations to the section 987 QBU on its return filed before November 9, 2023; or

(ii) First applies the 2016 and 2019 section 987 regulations to the section 987 QBU on its return filed on or after November 9, 2023 and applies § 1.987–10 in lieu of prior § 1.987–10.

(3) *Modifications of defined terms for purposes of this paragraph (c).* Solely for purposes of this paragraph (c)—

(i) *Application of § 1.987–10 in lieu of prior § 1.987–10.* For any taxpayer to which paragraph (c)(1)(iii)(B) or (c)(2)(ii) of this section applies, the term *2016 and 2019 section 987 regulations* includes § 1.987–10 and not prior § 1.987–10.

(ii) *Partnerships not included in section 987 electing group.* The term *section 987 electing group* does not include foreign partnerships, foreign non-grantor trusts, or foreign estates.

(iii) *Transition date.* The term *transition date* has the meaning provided in prior § 1.987–10.

(d) *Prior § 1.987–12.* For the applicability dates of prior § 1.987–12, *see* prior § 1.987–12(j). Prior § 1.987–12 applies through the end of the taxable year immediately preceding the first taxable year in which a taxpayer applies § 1.987–12 pursuant to paragraph (a) or (b) of this section.

■ 23. Section 1.988–1, as proposed to be amended by 81 FR 88882 (December 8, 2016), is further amended by:

■ a. Removing the language ''§ 1.987–1(b)(5)'' in paragraph (a)(4)(i) and adding the language ''§ 1.987–1(h)'' in its place.

■ b. Removing the language ''§ 1.987–1(b)(3)'' wherever it appears in paragraphs (a)(4)(i) and (iv) and adding the language ''§ 1.987–1(b)(4)'' in its place.

c. Removing the language ''§ 1.987–1(b)(4)'' wherever it appears in paragraphs (a)(4)(ii) and (iii) and adding the language ''§ 1.987–1(b)(5)'' in its place.

■ d. Removing the language ''§ 1.987–7(b)'' in the second sentence of paragraph (a)(4)(ii) and adding the language ''§ 1.987–7B(b)'' in its place.

■ 2. Revising paragraph (i).

The revisions read as follows:

§ 1.988–1 Certain definitions and special rules.

* * * * *

(i) *Applicability date*—(1) *In general.* Except as otherwise provided in this section, this section applies to taxable years beginning after December 31, 1986. Thus, except as otherwise provided in this section, any payments made or received with respect to a section 988 transaction in taxable years beginning after December 31, 1986, are subject to this section.

(2) *Paragraphs (a)(4) and (a)(10)(ii).* Generally, paragraphs (a)(4) and (a)(10)(ii) of this section apply to taxable years beginning after December 31, 2024. However, if pursuant to § 1.987–14(b), a taxpayer chooses to apply §§ 1.987–1 through 1.987–14 to a taxable year before the first taxable year described in § 1.987–14(a)(1), then paragraphs (a)(4) and (a)(10)(ii) of this section apply to that taxable year. *See* § 1.988–1(i), as contained in 26 CFR in part 1 in effect on April 1, 2017, for a prior applicability date for paragraphs (a)(4) and (a)(10)(ii) of this section.

■ 24. Section 1.988–4 is amended by revising paragraph (b)(2) to read as follows:

§ 1.988–4 Source of gain or loss realized on a section 988 transfer

* * * * *

(b) * * *

(2) *Proper reflection on the books of the taxpayer or qualified business unit*—(i) *In general.* For purposes of paragraph (b)(1) of this section, the principles of § 1.987–2(b) apply in determining whether an asset, liability, or item of income, gain, deduction, or loss is reflected on the books and records of a qualified business unit.

(ii) *Applicability date.* Generally, paragraph (b)(2)(i) of this section applies to taxable years beginning after December 31, 2024. However, if pursuant to § 1.987–14(b), a taxpayer chooses to apply §§ 1.987–1 through 1.987–14 to a taxable year before the first taxable year described in § 1.987–14(a)(1), then paragraph (b)(2)(i) of this section applies to that taxable year.

* * * * *

■ 25. Section 1.989(a–1 is amended by:

■ a. In paragraph (b) removing the language ''§ 1.987–1(b)(5)'' in paragraph (b)(2)(i)(C) and adding the language ''§ 1.987–1(h)'' in its place; and

■ b. Revising paragraphs (b)(2)(i)(D), (b)(4), and (d)(3) and (4).

The revisions read as follows:

§ 1.989(a)–1 Definition of a qualified business unit.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(D) *Trusts and estates.* A non-grantor trust (within the meaning of § 1.987–1(h)) and an estate is a QBU.

* * * * *

(4) *Applicability date.* Generally, paragraph (b)(2)(i) of this section applies to taxable years beginning after December 31, 2024. However, if pursuant to § 1.987–14(b), a taxpayer chooses to apply §§ 1.987–1 through 1.987–14 to a taxable year before the first taxable year described in § 1.987–14(a)(1), then paragraph (b)(2)(i) of this section applies to that taxable year. *See* § 1.989(a)–1(b)(4), as contained in 26 CFR in part 1 in effect on April 1, 2017, for a prior applicability date for paragraph (b)(2)(i) of this section.

* * * * *

(d) * * *

(3) *Proper reflection on the books of the taxpayer or qualified business unit.*

The principles of § 1.987–2(b) apply in determining whether an asset, liability, or item of income, gain, deduction, or loss is reflected on the books of a qualified business unit (and therefore is attributable to such unit).

(4) *Applicability date.* Generally, paragraph (d)(3) of this section applies to taxable years beginning after December 31, 2024. However, if pursuant to § 1.987–14(b), a taxpayer applies §§ 1.987–1 through 1.987–14 to a taxable year before the first taxable year described in § 1.987–14(a)(1), then paragraph (b)(2)(i) of this section applies to that taxable year. *See* § 1.989(a)–1(d)(4), as contained in 26 CFR in part 1 in effect on April 1, 2017, for a prior applicability date for paragraph (d)(3) of this section.

* * * * *

■ 26. Section 1.1502–13, as proposed to be amended at 88 FR 52057 (August 7, 2023), is further amended by:

■ a. In paragraph (a)(6)(ii) in the table revising the entry ''(G) Miscellaneous operating rules''

■ b. Redesignating paragraph (j)(9) as paragraph (j)(10).

■ c. Adding a new paragraph (j)(9).

■ d. Adding paragraphs (j)(10)(viii) and (ix).

■ e. Adding paragraph (l)(10).

The additions and revision read as follows:

§ 1.1502–13 Intercompany transactions.

(a) * * *

(6) * * *

(ii) * * *

Rule	General location	Paragraph	Example
* *	* *	*	* *
(G) Miscellaneous operating rules	§ 1.1502–13(j)(10)	(i)	Example 1. Intercompany sale followed by section 351 transfer to member.
		(ii)	Example 2. Intercompany sale of member stock followed by recapitalization.
		(iii)	Example 3. Back-to-back intercompany transactions—matching.
		(iv)	Example 4. Back-to-back intercompany transactions—acceleration.
		(v)	Example 5. Successor group.
		(vi)	Example 6. Liquidation—80% distributee.
		(vii)	Example 7. Liquidation—no 80% distributee.
		(viii)	Example 8. Loan by section 987 QBU.
		(ix)	Example 9. Sale of property by section 987 QBU.

* * * * *

(j) * * *

(9) *Section 987 QBUs.* No intercompany transaction is attributable to a section 987 QBU (within the meaning of § 1.987–2(b)). That is, in order to produce single entity treatment, an intercompany transaction that otherwise would involve the section 987 QBU(s) of one or more members is treated instead as occurring directly between the members (without the involvement of any section 987 QBUs), and transfers are deemed to take place between each section 987 QBU and its owner (*see* § 1.987–2(c)(2)(ii)). For example, if a member (M1) lends money to the section 987 QBU of another member (M2), this intercompany transaction is treated as a loan from M1 to M2 and a contribution from M2 to its section 987 QBU.

(10) * * *

(viii) *Example 8. Loan by section 987 QBU.* (A) *Facts.* S owns all the interests in DE1, a disregarded entity operating a business that is a section 987 QBU (S QBU) whose functional currency is the euro. S has net unrecognized section 987 gain with respect to S QBU. In year 1, S QBU lends €100 to B with interest due annually. B makes interest payments on the loan to S QBU in years 1 through 3. In year 3, B repays the loan and recognizes section 988 loss of $12 on the loan repayment. B recognizes no section 988 gain or loss on the euros it uses to pay the interest and principal. Other than with respect to the loan, there are no transfers between S and S QBU during years 1 through 3.

(*B*) *Analysis*—(*1*) *Loan.* Under paragraph (j)(9) of this section, the loan is treated as a transfer from S QBU to S and a loan directly between S and B. Specifically, S is treated as receiving a transfer of €100 from S QBU in year 1; S is then treated as lending €100 directly to B. For purposes of § 1.987–2, the loan is attributable to S, not to S QBU. As an intercompany loan, S's loan to B is subject to the rules of this section. Because there is a remittance from S QBU to S in year 1, S recognizes section 987 gain under § 1.987–5.

(*2*) *Interest payments.* While the loan is outstanding, each of B's interest payments to S QBU is treated as an interest payment from B to S, followed by a transfer from S to S QBU. S's intercompany interest income offsets B's corresponding interest expense. See paragraph (g)(7)(ii)(A)(*2*) of this section (*Example 1*). Since the functional currency of both S and B is the dollar, if B recognizes any section 988 gain or loss on the interest payments, S will recognize an offsetting amount of section 988 loss or gain. Because the only transfer between S and S QBU in year 2 is from S to S QBU, there is no remittance from S QBU to S and S does not recognize section 987 gain under § 1.987–5.

(*3*) *Repayment.* Upon the year 3 repayment of the loan, B is treated as repaying €100 to S, and S is treated as transferring €100 to S QBU. Since the functional currency of both S and B is the dollar, and B recognizes section 988 loss of $12 on the loan repayment, S will recognize an offsetting section 988 gain of $12. Because the only transfers between S and S QBU in year 3 are from S to S QBU, there is no remittance from S QBU to S and S does not recognize section 987 gain under § 1.987–5.

(*4*) *Summary.* Overall, the group's taxable income includes S's section 987 gain in year 1 (the section 988 inclusions offset). This result is consistent with the treatment of a single corporation that borrows from its section 987 QBU.

(ix) *Example 9. Sale of property by section 987 QBU*—(A) *Facts.* M1 owns all the interests in DE1, a disregarded entity operating a business that is a section 987 QBU (M1 QBU) whose functional currency is the euro. M1 has net unrecognized section 987 gain with respect to M1 QBU. M1 QBU sells property to M2 for €100 in year 1.

(B) *Analysis*—(*1*) *In general.* Under paragraph (j)(9) of this section, the sale of property is treated as a transfer of the property from M1 QBU to M1, followed by an exchange of the property for €100 directly between M1 and M2, and a transfer of the €100 from M1 to M1 QBU.

(*2*) *Distribution.* M1 QBU is treated as transferring the property to M1.

(*3*) *Exchange.* M1 is then treated as selling the property to M2 for €100. M1 will take into account its intercompany gain or loss on the property under the rules of this section. M2 recognizes intercompany section 988 gain or loss on its exchange of €100 for the property. See paragraph (b)(1)(iii) of this section for property exchanges between members.

(*4*) *Contribution.* Finally, M1 is treated as transferring the €100 to M1 QBU. Because M1's basis in the €100 equals its fair market value, M1 has a corresponding section 988 gain or loss of zero upon the contribution. *See* § 1.988–1(a)(10). Both the transfer of the property from M1 QBU to M1 and the transfer of the €100 from M1 to M1 QBU are taken into account in determining whether there is a remittance from M1 QBU to M1 in year 1 and whether M1 recognizes section 987 gain under § 1.987–5.

(*5*) *Summary.* Overall, in year 1, M1 may take into account section 987 gain if the transfers between M1 and M1 QBU result in a remittance, and M2 takes into account section 988 gain or loss on the €100. This result is consistent with the treatment of a single corporation that purchases property from its section 987 QBU.

(l) * * *

(10) *Applicability date.* Generally, paragraph (j)(9) of this section applies to taxable years beginning after December 31, 2024, for which the original Federal income tax return is due (without extensions) after [DATE OF PUBLICATION OF THE FINAL REGULATIONS IN THE FEDERAL REGISTER]. However, if pursuant to § 1.987–14(b), a taxpayer chooses to apply §§ 1.987–1 through 1.987–14 to a taxable year before the first taxable year described in § 1.987–14(a)(1), then paragraph (j)(9) of this section applies to that taxable year and subsequent years.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2023–24649 Filed 11–9–23; 4:15 pm]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 88 Tuesday,
No. 218 November 14, 2023

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2023–0051, Sequence No. 6]

Federal Acquisition Regulation; Federal Acquisition Circular 2024–01; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2024–01. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

DATES: For effective dates see the separate documents, which follow.

ADDRESSES: The FAC, including the SECG, is available at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

RULES LISTED IN FAC 2024–01

Item	Subject	FAR case	Analyst
I	New Designated Country—North Macedonia	2023–019	Uddowla.
II	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2024–01 amends the FAR as follows:

Item I—New Designated Country—North Macedonia (FAR Case 2023–019)

This final rule amends the Federal Acquisition Regulation (FAR) to add North Macedonia as a new designated country under the World Trade Organization Government Procurement Agreement (WTO GPA).

Item II—Technical Amendments

An administrative change is made at FAR 52.212–3, 52.212–5, 52.225–3, 52.225–4, 52.225–11, 52.225–12, 52.225–23, and 52.225–24.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2024–01 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2024–01 is effective November 14, 2023.

John M. Tenaglia,

Principal Director, Defense Pricing and Contracting, Department of Defense.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Karla Smith Jackson,

Assistant Administrator for Procurement, Senior Procurement Executive/Deputy CAO, National Aeronautics and Space Administration.

[FR Doc. 2023–24931 Filed 11–13–23; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 25, and 52

[FAC 2024–01, FAR Case 2023–019, Item I; Docket No. 2023–0019; Sequence No. 1]

RIN 9000–AO67

Federal Acquisition Regulation: New Designated Country—North Macedonia

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to add North Macedonia as a new designated country under the World Trade Organization Government Procurement Agreement.

DATES: Effective November 14, 2023.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Mahruba Uddowla, Procurement Analyst, at 703–605–2868 or by email at *mahruba.uddowla@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2024–01, FAR Case 2023–019.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are amending the FAR to add North Macedonia as a new designated country under the World Trade Organization Government Procurement Agreement (WTO GPA). North Macedonia became a party to the WTO GPA on October 30, 2023. The Trade Agreements Act (19 U.S.C. 2501 *et seq.*) provides the authority for the President to waive the Buy American statute and other discriminatory provisions for eligible products from countries that have signed an international trade agreement (such as the WTO GPA) with the United States. The President has delegated this authority to the U.S. Trade Representative.

The U.S. Trade Representative has determined that North Macedonia will provide appropriate reciprocal competitive Government procurement opportunities to United States products and services. The U.S. Trade Representative published a notice in the **Federal Register** waiving the Buy American statute and other discriminatory provisions for eligible products from North Macedonia at 88 FR 68905 on October 4, 2023.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is 41 U.S.C. 1707. Subsection (a)(1) of 41 U.S.C. 1707 requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it has no significant cost or administrative impact on contractors or offerors. This final rule only updates the lists of designated countries, in order to conform to the determination by the U.S. Trade Representative.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), or for Commercial Services

This final rule does not create any new provisions or clauses, nor does it change the applicability of any existing provisions or clauses included in solicitations and contracts valued at or below the SAT, or for commercial products (including COTS items) and commercial services.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801–808) requires interim and final rules to be submitted to Congress before the rule takes effect. DoD, GSA, and NASA will send this rule to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has determined that this is not a major rule under 5 U.S.C. 804.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section II. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VII. Paperwork Reduction Act

This rule affects the information collection requirements in the provisions at FAR 52.212–3, Offeror Representations and Certifications—Commercial Products and Commercial Services, and 52.225–6, Trade Agreements Certificate (which goes along with the revised clause at FAR 52.225–5, Trade Agreements), and in the clauses at FAR 52.225–11, Buy American—Construction Materials Under Trade Agreements, and 52.225–23, Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials Under Trade Agreements, all currently approved under OMB Control Number 9000–0024, Buy American, Trade Agreements, and Duty-Free Entry, in accordance with the Paperwork Reduction Act (44 U.S.C. 3501–3521). The impact, however, is negligible because the rule affects the response of an offeror that is offering a product of North Macedonia to the information collection requirements in the provisions at FAR 52.212–3(g)(5), 52.225–6, 52.225–11, and 52.225–23. The offeror no longer needs to list a product from North Macedonia under ''other end products'' or ''foreign (nondesignated country)'' construction material because North Macedonia is now a designated country.

List of Subjects in 48 CFR Parts 22, 25, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 22, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 22, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1503 [Amended]

■ 2. Amend section 22.1503 by removing from paragraph (b)(3) ''New Zealand, Norway,'' and adding ''New Zealand, North Macedonia, Norway,'' in its place.

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

■ 3. Amend section 25.003 by—

■ a. Removing from the definition ''Designated country'' in paragraph (1) ''New Zealand, Norway,'' and adding ''New Zealand, North Macedonia, Norway,'' in its place; and

■ b. Removing from the definition ''World Trade Organization Government Procurement Agreement (WTO GPA) country'' ''New Zealand, Norway,'' and adding ''New Zealand, North Macedonia, Norway,'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (b)(30) ''(DEC 2022)'' and adding ''([NOV 2023])'' in its place; and

■ c. Removing from paragraph (b)(52) ''(DEC 2022)'' and adding ''([NOV 2023])'' in its place.

The revision reads as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services ([NOV 2023])

* * * * *

■ 5. Amend section 52.213–4 by—
■ a. Revising the date of the clause; and
■ b. Removing from paragraph (b)(1)(iii) ''(DEC 2022)'' and adding ''([NOV 2023])'' in its place.

The revision reads as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services) ([NOV 2023])

* * * * *

■ 6. Amend section 52.222–19 by—
■ a. Revising the date of the clause; and
■ b. Removing from paragraph (a)(3) ''New Zealand, Norway,'' and adding ''New Zealand, North Macedonia, Norway,'' in its place.

The revision reads as follows:

52.222–19 Child Labor—Cooperation with Authorities and Remedies.

* * * * *

Child Labor—Cooperation With Authorities and Remedies ([NOV 2023])

* * * * *

■ 7. Amend section 52.225–5 by—
■ a. Revising the date of the clause; and
■ b. In paragraph (a), in the definition ''Designated country'', removing from paragraph (1) ''New Zealand, Norway,'' and adding ''New Zealand, North Macedonia, Norway,'' in its place.

The revision reads as follows:

52.225–5 Trade Agreements.

* * * * *

Trade Agreements ([NOV 2023])

* * * * *

■ 8. Amend section 52.225–11 by—
■ a. Revising the date of the clause; and
■ b. In paragraph (a), in the definition ''Designated country'', removing from paragraph (1) ''New Zealand, Norway,'' and adding ''New Zealand, North Macedonia, Norway,'' in its place.

The revision reads as follows:

52.225–11 Buy American—Construction Materials Under Trade Agreements.

* * * * *

Buy American—Construction Materials Under Trade Agreements ([NOV 2023])

* * * * *

■ 9. Amend section 52.225–23 by—
■ a. Revising the date of the clause; and
■ b. In paragraph (a), in the definition ''Designated country'', removing from paragraph (1) ''New Zealand, Norway,'' and adding ''New Zealand, North Macedonia, Norway,'' in its place.

The revision reads as follows:

52.225–23 Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials Under Trade Agreements.

* * * * *

Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials Under Trade Agreements ([NOV 2023])

* * * * *

[FR Doc. 2023–24932 Filed 11–13–23; 8:45 am]
BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2024–01; Item II; Docket No. FAR–2023–0052; Sequence No. 5]

Federal Acquisition Regulation; Technical Amendments

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document amends the Federal Acquisition Regulation (FAR) to make needed editorial changes.

DATES: Effective November 14, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Lois Mandell, Regulatory Secretariat Division (MVCB), at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2024–01, Technical Amendments.

SUPPLEMENTARY INFORMATION: This document makes editorial changes to 48 CFR part 52.

List of Subjects in 48 CFR Part 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

■ 2. Amend section 52.212–3 by—
■ a. Revising the date of the provision; and
■ b. Removing from paragraphs (g)(1)(i)(B), (g)(1)(ii), and (g)(3) the word ''Bahrainian'' wherever it appears and adding ''Bahraini'' in its place.

The revision reads as follows:

52.212–3 Offeror Representations and Certifications—Commercial Products and Commercial Services.

* * * * *

Offeror Representations and Certifications—Commercial Products and Commercial Services (NOV 2023)

* * * * *

■ 3. Amend section 52.212–5 by—
■ a. Revising the date of the clause;
■ b. Removing from paragraph (b)(51)(i) ''(DEC 2022)'' and adding ''(NOV 2023) in its place; and
■ c. Removing from paragraph (b)(51)(iv) ''(JAN 2021)'' and adding ''(NOV 2023) in its place.

The revision reads as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (NOV 2023)

* * * * *

■ 4. Amend section 52.225–3 by—
■ a. Revising the date of the clause;
■ b. Removing from paragraph (a), in the definition of ''Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product'', the word ''Bahrainian'' and adding ''Bahraini'' in its place;
■ c. Removing from the last sentence of paragraph (c) the word ''Bahrainian''

wherever it appears and adding ''Bahraini'' in its place; and

■ d. In Alternate III:

■ i. Revising the date of the Alternate;

■ ii. Removing from the introductory text the word ''Bahrainian'' wherever it appears and adding ''Bahraini'' in its place;

■ iii. Removing from the definition of ''Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end product'' the word ''Bahrainian'' and adding ''Bahraini'' in its place; and

■ iv. Removing from the last sentence of paragraph (c) the word ''Bahrainian'' wherever it appears and adding ''Bahraini'' in its place.

The revisions read as follows:

52.225–3 Buy American—Free Trade Agreements—Israeli Trade Act.

* * * * *

Buy American—Free Trade Agreements—Israeli Trade Act (NOV 2023)

* * * * *

Alternate III (NOV 2023). * * *

* * * * *

■ 5 Amend section 52.225–4 by—

■ a. Revising the date of the provision;

■ b. Removing from paragraph (a)(2) the word ''Bahrainian'' and adding ''Bahraini'' in its place;

■ c. Removing from paragraph (b) the word ''Bahrainian'' wherever it appears and adding ''Bahraini'' in its place; and

■ d. In Alternate III:

■ i. Revising the date of the Alternate; and

■ ii. Removing from paragraph (b) the word ''Bahrainian'' wherever it appears and adding ''Bahraini'' in its place.

The revisions read as follows:

52.225–4 Buy American—Free Trade Agreements—Israeli Trade Act Certificate.

* * * * *

Buy American—Free Trade Agreements—Israeli Trade Act Certificate (NOV 2023)

* * * * *

Alternate III (NOV 2023). * * *

* * * * *

■ 6. Amend section 52.225–11 in Alternate I by—

■ a. Revising the date of the Alternate and removing from the introductory text the word ''Bahrainian'' and adding ''Bahraini'' in its place;

■ b. Removing from the definition of ''Bahrainian, Mexican, or Omani construction material'' the word ''Bahrainian'' and adding ''Bahraini'' in its place; and

■ c. Removing from paragraphs (b)(1) and (2) the word ''Bahrainian'' and adding ''Bahraini'' in its place, respectively.

The revisions read as follows:

52.225–11 Buy American—Construction Materials Under Trade Agreements.

* * * * *

Alternate I (NOV 2023). * * *

* * * * *

■ 7. Amend section 52.225–12 in Alternate II by—

■ a. Revising the date of the Alternate and removing from the introductory text the word ''Bahrainian'' and adding ''Bahraini'' in its place; and

■ b. Removing from paragraph (d)(1) and paragraph (d)(3) introductory text the word ''Bahrainian'' and adding ''Bahraini'' in its place, respectively.

The revision reads as follows:

52.225–12 Notice of Buy American Requirement—Construction Materials Under Trade Agreements.

* * * * *

Alternate II (NOV 2023). * * *

* * * * *

■ 8. Amend section 52.225–23 in Alternate I by—

■ a. Revising the date of the Alternate and removing from the introductory text the word ''Bahrainian'' and adding ''Bahraini'' in its place;

■ b. Removing from the definition of ''Bahrainian, Mexican, or Omani construction material'' the word ''Bahrainian'' and adding ''Bahraini'' in its place; and

■ c. Removing from paragraph (b)(2) the word ''Bahrainian'' and adding ''Bahraini'' in its place.

The revision reads as follows:

52.225–23 Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials Under Trade Agreements.

* * * * *

Alternate I (NOV 2023). * * *

* * * * *

■ 9. Amend section 52.225–24 in Alternate II by—

■ a. Revising the date of the Alternate and removing from the introductory text the word ''Bahrainian'' and adding ''Bahraini'' in its place; and

■ b. Removing from paragraph (d)(1) and paragraph (d)(3) introductory text the word ''Bahrainian'' and adding ''Bahraini'' in its place, respectively.

The revision reads as follows:

52.225–24 Notice of Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials Under Trade Agreements.

* * * * *

Alternate II (NOV 2023). * * *

* * * * *

[FR Doc. 2023–24933 Filed 11–13–23; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2023–0051, Sequence No. 6]

Federal Acquisition Regulation; Federal Acquisition Circular 2024–01; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide (SECG).

SUMMARY: This document is issued under the joint authority of DoD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2024–01, which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding these rules by referring to FAC 2024–01, which precedes this document.

DATES: November 14, 2023.

ADDRESSES: The FAC, including the SECG, is available at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2024–01 and the FAR Case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared.

RULES LISTED IN FAC 2024–01

Item	Subject	FAR case	Analyst
I	New Designated Country—North Macedonia	2023–019	Uddowla.
II	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2024–01 amends the FAR as follows:

Item I—New Designated Country-North Macedonia (FAR Case 2023–019)

This final rule amends the Federal Acquisition Regulation (FAR) to add North Macedonia as a new designated country under the World Trade Organization Government Procurement Agreement (WTO GPA).

Item II—Technical Amendments

An administrative change is made at FAR 52.212–3, 52.212–5, 52.225–3, 52.225–4, 52.225–11, 52.225–12, 52.225–23, and 52.225–24.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2023–24934 Filed 11–13–23; 8:45 am]

BILLING CODE 6820–EP–P

Reader Aids

Federal Register

Vol. 88, No. 218

Tuesday, November 14, 2023

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, NOVEMBER

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *https://www.archives.gov/federal-register/laws/current.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text is available at *https://www.govinfo.gov/app/collection/plaw*. Some laws may not yet be available.

H.R. 366/P.L. 118–20
Korean American Vietnam Allies Long Overdue for Relief Act (Nov. 13, 2023; 137 Stat. 108)

H.R. 1226/P.L. 118–21
Wounded Warrior Access Act (Nov. 13, 2023; 137 Stat. 109)

Last List October 10, 2023

Public Laws Electronic Notification Service (PENS)

PENS is a free email notification service of newly enacted public laws. To subscribe, go to *https://portalguard.gsa.gov/*__layouts/pg/register.aspx.

Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.